

NATIONAL MARINE FISHERIES SERVICE

# COOPERATIVE ENFORCEMENT PROGRAM

***Bruce Buckson***  
***Director***

**OFFICE OF LAW  
ENFORCEMENT**

***8484 Georgia Avenue***  
***Suite 415***  
***Silver Spring, Md 20910***  
***Ph: 301-427-2300***  
***Fax: 301-427-2055***



# PROGRAM MANUAL 2012



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## INTRODUCTION

In March 2003, the US Department of Commerce, Office of the Inspector General (OIG) issued a report, No. IPE-15154/March 2003, and made specific recommendations regarding the Office of Law Enforcement's (OLE) Cooperative Enforcement Program (CEP), and in particular, the Joint Enforcement Agreements (JEA) that OLE manage. (See, pp. 20-27) Specifically, the report noted that "OLE needs to prepare clear and specific guidance for the JEA program that sets forth program goals, priorities, and requirements; spending guidelines; agreement approval and evaluation criteria; and Federal and State agency rules and responsibilities. OLE also needs to increase its verification of State-level reporting and conduct site visits to evaluate program activities."

This Program Manual is intended to address those and other OIG recommendations and to provide information and guidance to OLE personnel and OLE's State and territorial partners.

### NOTE:

**Where the term "State" is used in this manual, unless specifically stated, the term should be read to include the terms "Territory" and "Commonwealth."**

## STATUTORY AUTHORITY AND GENERAL REQUIREMENTS

### AUTHORITY

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1801, et seq.)(MSFCMA) authorizes the Secretary of the U.S. Department of Commerce to enter into "joint enforcement agreements" with any eligible State to perform duties of the Secretary relating to law enforcement provisions of the MSFCMA or any other marine resource law enforced by the Secretary. The MSFCMA also provides the means by which funds are transferred to the States for work performed on behalf of the Secretary. Through various means the authority to enter into joint enforcement agreements delineated in the MSFCMA and the other laws is delegated to the Director, OLE.

The Director is authorized to enter into Cooperative Enforcement and Joint Enforcement Agreements based upon the authority granted under the following Federal laws:

- ✓ The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1801, et seq.)
- ✓ The Endangered Species Act of 1973 (16 U.S.C. §1531, et seq.)
- ✓ The Lacey Act Amendments of 1981 (U.S.C. §3371, et seq.)
- ✓ The National Marine Sanctuaries Act (16 U.S.C. §1431, et seq.)
- ✓ The Marine Mammal Protection Act (16 U.S.C. §1631, et seq.)

## GENERAL REQUIREMENTS

The MSFCMA lists several requirements for participation in the CEP.

1. Only “Eligible States” that are defined in the MSFCMA may apply for a JEA. An “eligible state” is a state that is in, bordering on, the Atlantic Ocean (including the Caribbean Sea), the Pacific Ocean, the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or 1 or more of the Great Lakes.<sup>1</sup>
2. “State” is defined in the MSFCMA as “each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and any other Commonwealth, territory, or possession of the United States.
3. State agencies must have “marine law enforcement responsibilities.”
4. JEAs must be consistent with the purposes and intent of funding State law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary of Commerce relating to the law enforcement provisions of the marine resource laws enforced by the Secretary.
5. JEAs must also provide for confidentiality of data and information submitted to the State.

## PROGRAM PURPOSE, STRUCTURE, AND OBJECTIVES

The CEP has, since its inception, aimed to increase living marine resource conservation, endangered species protection, and critical habitat enforcement while simultaneously strengthening State and territorial enforcement resources.

This program utilizes two main tools to accomplish these purposes. First, is the Cooperative Enforcement Agreement (CEA) which authorizes State and U.S. territorial marine conservation law enforcement officers to enforce Federal laws and regulations. The second is the JEA, which includes a formal operations plan, is the vehicle through which funds are transferred to State and U.S. territorial law enforcement agencies to perform law enforcement services in support of Federal marine conservation regulations, endangered species, and critical habitats.

The objective of this Program Manual is to:

- ✓ Establish OLE policies and procedures for administering the CEP and JEA’s

<sup>1</sup> There are a total of 45 States, territories, or possessions that are “eligible” to participate in the CEP. There are 23 coastal states, (Al, Ak, Ca, Ct, De, Fl, Ga, Ha, La, Me, Md, Ma, Ms, NH, NJ, NY, NC, Or, RI, SC, Tx, Va, and Wa.), 5 territories, (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), 7 Great Lakes States, (Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin-New York, a Great Lake State, is also a coastal state.), and 10 U.S. possessions, (Baker Island, Howland Island, Jarvis Island, Kingman Reef, Midway Islands, Navassa Island, Palau, Palmyra Atoll, Wake Island, and Micronesia).

- ✓ Identify and describe the types of agreements that OLE enters into with State and territorial entities
- ✓ Identify and describe the responsibilities and functions of OLE officials in administering agreements
- ✓ Achieve operational priorities identified by OLE supervisors by State/territorial entities.
- ✓ Supplement Federal and State marine resource conservation and endangered species and critical habitat enforcement mission.
- ✓ Provide meaningful analysis and measurement of CEP goals and objectives.
- ✓ Encourage cooperation and flexibility in administration of program.
- ✓ Identify best practices.
- ✓ Collect and analyze data in order to enhance program and achievement of Federal priorities
- ✓ Provide meaningful feedback to OLE supervisors and State/U.S. territorial entities as to whether enforcement efforts are consistent with purposes and goals of CEP.

## ENFORCEMENT PRIORITIES

OLE must make the most effective use of its limited staff resources. All enforcement activities do not contribute equally to marine conservation. OLE division heads and managers must be able to accomplish NMFS enforcement priorities and initiate appropriate enforcement action that will have the greatest impact.

**OLE enforcement efforts and those covered by a JEA should focus on those illegal activities having the greatest negative impact on federally protected fisheries, sanctuaries, endangered species, and protected habitats.**

Enforcement priorities and needs are driven by OLE's mission and obligations, and by State and territorial resources. These priorities and needs, however, vary from one geographical area to the next. Depending upon the complexity and breadth of a particular enforcement need, OLE may have sufficient manpower and resources to commit the proper level of attention to the matter or they may need assistance from outside sources. JEA's are intended to fill that need by providing financial and material incentives to State and territorial partners to provide the resources the OLE lacks. This section will help OLE managers and State and territorial partners to identify priorities that will be addressed in a JEA.

OLE division heads must actively seek opportunities to efficiently and economically accomplish the OLE mission by entering into advantageous relationships with State and territorial entities. The OLE will formalize and document these relationships through Cooperative Enforcement Agreements, Joint Enforcement Agreements and Operations Plans which will explain how the relationships are managed. The foundation of these various devices is the enforcement priorities identified by NMFS and OLE division heads. OLE division heads are responsible for insuring that the enforcement priorities of the division are dealt with by OLE resources or JEA with State

or territorial involvement. Below are some helpful hints to identify and implement enforcement priorities.

### **IDENTIFY PRIORITIES**

Priorities can be developed from a range of sources—OLE’s local partners, local intelligence gatherers, other government or national bodies, and from OLE sources itself.

#### **Engage Local Partners**

The best source of information about the types of marine conservation issues involving local jurisdictions is the State and territorial law enforcement agencies themselves. Very often the OLE division already has an excellent and close working relationship with those agencies. This includes working jointly on enforcement initiatives, sharing information and intelligence, partnering on training, and communicating regularly.

These relationships have been used to identify Federal enforcement issues that become priorities and the means to accomplish those needs. But, they also operate to gather feedback on draft priorities to make sure the priorities are attainable through the partnership.

#### **Use Local Intelligence**

Most successful OLE divisions have good local intelligence gatherers in their areas and communities. These can be the councils and commissions who oversee marine conservation efforts in the region. Or, informants—insiders in the fishing industry—can provide valuable information that leads to the identification of an enforcement need or priority. Open lines of communication are invaluable. Intelligence is worthless if it does not reach OLE.

#### **Incorporate National Priorities**

Much of OLE’s mission is dictated by National Marine Fisheries Service (NMFS) mandate. Effective managers are aware of the priorities of the region that have been established by NMFS. Those priorities are usually detailed and specific and provide a framework from which all enforcement priorities stem.

#### **Identify Region’s Priorities**

Aside from the national perspective, local councils and commissions, usually through regulation, determine their own priorities. Effective councils and commissions are aware of OLE’s enforcement priorities. And, the reverse is true for effective OLE managers. This is particularly important for those priorities that relate to the quality of the fisheries and resources of the region, which cut across the missions of OLE and the goals of the region’s resource managers. Shared priorities have a better chance of being achieved.

### **Gather OLE Priorities**

Setting enforcement priorities within the division is an important step to understand the marine conservation issues that affect an area and to identify what goals are achievable. Most often the highest priority goes to the activity with the greatest impact on the resource or what will garner the most public attention or support. Those activities are often prioritized based on the availability of human, environmental, or financial resources needed to achieve them or external threats or pressures such as pending legislation or an upcoming event. Like issues, timing is also a consideration. Some goals will need to be worked on over a period of time while others can be achieved relatively quickly.

#### **SAC Responsibilities:**

- ✓ Keep a list of enforcement issues that come up during the year
- ✓ Attend meetings of councils and commissions
- ✓ Analyze internal data
- ✓ Speak to local partners regularly about enforcement needs and successes
- ✓ Write down what is sought to achieve
- ✓ Break those goals into manageable targets
- ✓ Incorporate national priorities and goals
- ✓ Establish a process—engage DSAC's, ASACS, field agents
- ✓ Develop a manageable, reasonable list of priorities and goals that can be accomplished within a set period of time.
- ✓ Identify which priorities will be handled by OLE
- ✓ Identify which priorities can be handled jointly with State or territorial partners
- ✓ Identify those priorities that can only be achieved by a State or territorial partner through a JEA

**Priorities can be identified and adjusted anytime according to needs, resources and opportunities.**

### **PRIORITIZE THE PRIORITIES**

Once the division manager has identified what the needs of the division are, the manager will have to put these needs into some type of order. It is important to be realistic—can all of the priorities be achieved at the same time? A common obstacle is that the division may identify too many priorities without a clear idea of how they would all be delivered. Better divisions will, however, prioritize the needs and establish reasonable timetables to accomplish them in stages. By doing this, divisions will be able to accomplish more.

#### **Be Specific**



Especially when dealing with priorities that will be handled jointly or by State or territorial partners, it helps if the priorities are not just broad generic areas such as “inspect seafood processing plants.” This is more of vision than a priority. This vision could be better stated: “inspect seafood processing plants to insure compliance with species limits.” In this way, the priority can be backed up with specific, measurable, achievable, relevant, and time-bound targets that can be measured by a number of performance indicators. In this example, the enforcement targets might be “to ensure that during the months of June and July, fishing vessels are meeting and not exceeding take limits for Atlantic Tuna, by inspecting fish processing plants on a daily basis.”

### **Balance Local with National Priorities**

Once priorities have been identified the next step is to develop a balance between competing ones. Will the NMFS priorities take precedence over State/territorial priorities? OLE managers will have to achieve the proper balance in determining which priorities will receive the most attention. Consultation with NMFS leaders, OLE leadership, and local partners will most often lead to a proper balance.

### **Align Priorities with State or Territorial Partners**

Once priorities have been identified and prioritized, divisional managers should work with their State and territorial partners to create as wide a resource base as possible so that the priorities can be met. Understanding the abilities and limitations of State and territorial partners will also ensure that priorities, once relegated, can be achieved as expected.

## **MAINTAIN FOCUS**

### **Use JEA Processes to Ensure Focus**

The best way to maintain focus for enforcement priorities is to negotiate an agreed-upon plan with State and territorial partners who will do the work that will achieve the priority. OLE has operated under joint enforcement agreements with various coastal States to meet the enforcement needs of the agency that cannot be met through internal resources. This program manual is intended to provide the means and processes by which the JEA is negotiated and implemented.

### **Communicate Priorities**

Keeping everyone in the region and the key partnerships aware of the priorities and progress on these is an important factor in maintaining focus. Division managers should use a variety of methods, such as staff briefings, council and commission meetings, local partnership meetings, newsletters, and email. Key messages need to be championed by the OLE leadership and SAC's, with the priorities Stated and restated.



**Review Priorities**

It is important to revisit and review priorities at regular intervals, assessing progress and making changes to them as appropriate. This is usually accomplished by analysis of monthly reports submitted by the partner. If the aims have been achieved then it is important to focus on more pressing priorities. There is an important role for scrutiny to keep an overview of progress against priorities, and to investigate and identify any blockages that are preventing progress from being made.

**Source:** Audit Commission: Setting Priorities and Maintaining Focus

**USE OF FUNDS**

All monies allocated for direct operations under a JEA are intended to fund the AGENCY for all reasonable, direct operational services and costs outlined in the JEA, such as personnel, vessel expenses, equipment purchase, maintenance, fuel, and repairs.

All monies allocated as overhead under a JEA are intended for use by the Agency for all reasonable costs associated with the administrative and clerical expenses required to administer a JEA, and/or for such other and further reasonable expenses to accomplish and/or support State-related marine conservation activities.

Any use of funds allocated in the JEA for any other purpose not directly related to the marine conservation mission may violate the terms of this agreement and may be grounds for demand for return of all or part of the funds allocated in a JEA.

Any funds not obligated before expiration or termination of a JEA must be returned to the OLE. Funds are “obligated” for purposes of a JEA when there is a legal, binding agreement or acknowledgment of a liability to pay a certain sum to a particular person or set of persons executed prior to the expiration or termination of the JEA.

The AGENCY may request, at least 30 days prior to the expiration or termination of a JEA, that the OLE extend the expiration date of the JEA.

The OLE may, at its sole discretion and so long as the JEA has not already expired or been terminated, agree to extend the expiration date of the JEA to any date up to the congressionally mandated limit of the availability of the funds. Any funds not obligated prior to the expiration of any extended date must be promptly returned to the OLE.

## ALLOWABLE COST GUIDE

Another area that requires guidance is the allowable uses of JEA funds. JEA's are not subject to the traditional regulations regarding allowable and non-allowable costs that will be covered by Federal funding. Therefore, there exists little guidance as to what will be considered an allowable cost under the JEA. OLE generally will allow all reasonable costs for personal services, including wages and fringe benefits.

### IMPORTANT

FINAL DETERMINATION OF ALLOWABLE COSTS WILL BE MADE BY OLE.

## OVERVIEW

1. Purpose. This Guide establishes principles and standards for determining allowable costs for CEP awards carried out through joint enforcement agreements with State marine conservation law enforcement agencies.
2. Required Action. OLE is required to implement the provisions of this guide and to ensure that agencies receiving CEP funds follow the guidance herein.

### A. Definitions:

1. "Award" means a fully executed and funded joint enforcement agreement between a State marine conservation law enforcement agency and the OLE.
2. "Awarding agency" means OLE.
3. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the OLE.
4. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

### B. Basic Guidelines for Allowable Costs

1. Factors affecting allowability of costs. To be allowable under CEP awards, costs must meet the following general criteria:
  - (a) Be necessary and reasonable for proper and efficient performance and administration of CEP awards.

- (b) Be allocable to CEP awards under the provisions of this Guide.
- (c) Be authorized or not prohibited under State or local laws or regulations.
- (d) Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- (e) Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- (f) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (g) Except as otherwise provided for in this Guide, be determined in accordance with generally accepted accounting principles.
- (h) Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- (i) Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In determining reasonableness of a given cost, consideration shall be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- (e) Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

**D. Classifications of Permissible Costs**

1. Direct Operations Costs
  - a. Salary
  - b. Benefits
  - c. Vessel/Aircraft Costs
  - d.
2. Indirect Operations Allowances/Overhead
3. Purchases
  - a. Equipment
  - b. Services

**E. Direct Operations Costs**

1. General. Direct operations costs are those that can be identified specifically with a particular final cost objective in the JEA, such as at-sea activity, dockside, outreach, or other identified activity.

2. Application. Typical direct operation costs chargeable to CEP awards are:

a. Salary and Benefits. A state receiving JEA funds may be reimbursed the reasonable and necessary costs of providing a trained and equipped law enforcement officer's services or those of a properly trained administrative or clerical employee under the requirements of a JEA. This includes an hourly or overtime salary and benefits calculated at the "journeyman" or experienced rate, based upon the agency's published personnel and salary policies. A state receiving JEA funds must provide proper documentation to support the rates set forth in the JEA as part of the JEA application process. JEA funds may also be used to reimburse a state for supervisory employees salaries and benefits when the employee is directly involved in providing JEA support.

B. Vessel/Aircraft Operating Costs. In addition, the state may be reimbursed for the reasonable and necessary costs associated with the operation of vessels and aircraft, including fuel and oil. Expenses to provide specially trained personnel to operate vessels and aircraft may be also be reimbursed under the JEA. Specific documentation that sets forth the hourly burn rate for fuel and oil for each class of vessel or aircraft must be included in the JEA application.

3. Reasonableness. Compensation for employees engaged in JEA activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

4. Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit employee agreement, or an established policy of the governmental unit.

#### **E. Indirect Operations Allowance (Overhead)**

1. General. The indirect operations allowance, aka “overhead,” is a percentage of the direct operations portion of a JEA award, usually 35% of the amount dedicated to direct marine conservation law enforcement activities, which may be used to pay for expenses and costs associated with the direct operation of the marine conservation agency, but are not readily identifiable during the planning of the JEA. The purpose of providing these funds is to assist the agency in paying for routine administrative costs, or other services, not covered by the JEA, that are necessary to maintain the operation of the JEA.

2. A superior governmental unit, such as the parent agency of the marine conservation agency, or the State, may charge as indirect operations allowances, costs and expenses necessary to provide routine centralized services such as payroll, rent, cleaning, etc. However, the total charged for those services must be reasonable and not applied to general government expenses.

**F. Direct Purchases.** The state may also obtain equipment or services with CEP funds that are directly related to meeting the requirements of the JEA or those which enhance the ability of the state to complete its general marine conservation law enforcement responsibilities.

"Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year.

1. Any equipment purchased pursuant to a JEA must rationally be related to marine conservation law enforcement and be used in that mission for a reasonable length of time. The state may purchase equipment such as vehicles, vessels, computers, safety equipment, and so forth.
2. In addition, the state may purchase a service, such as internet or cellular telephone access.
3. With proper justification, the state may purchase personal services such as hiring or paying the salary of an employee whose job is primarily to support the state's marine conservation law enforcement mission, or to provide training or other service that requires a person to deliver.
4. The agency may use up to, but not more than, 50% of the total JEA award for external costs.

5. The agency must provide copies of invoices to OLE as evidence of the acquisition of the equipment or service.
6. To the extent possible, equipment purchased with CEP funds should be used for marine conservation law enforcement for the useful life of the equipment.
7. Direct purchase funds must be obligated prior to the expiration of the JEA. For purposes of the CEP, funds are "obligated" when there exists a legally binding obligation on the part of the state to expend funds for a permissible purpose. Funds not obligated by the expiration or termination of the JEA must be returned to OLE.

#### **G. Unallowable Costs/Expenses.**

1. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

2. Entertainment. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

3. General government expenses. The general costs of government are unallowable. These include:

(a) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally recognized Indian tribal government;

(b) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(c) Costs of the judiciary branch of a government; and

(d) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

4. Goods or services for personal use. Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

5. Lobbying.

General. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15,

1990), and 57 FR 1772 (January 15, 1992), respectively.

6. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally sponsored agreement or regulatory matter on any basis other than the merits of the matter.

## EVALUATION CRITERIA

In the evaluation process, States and territories may submit a JEA funding proposal. This process is the culmination of negotiations between the OLE regional managers and the State enforcement officials. The goal of the negotiations is for OLE to outline the Federal enforcement needs for the immediate and foreseeable future and the identification of resources that might be available or might be needed at the State level to meet those needs, whether those needs are manpower or material or both.

The State may seek JEA funding for manpower and material resources to assist it in completing not only those Federal JEA obligations, but also its own State-mandated duties. An application package is prepared by the State and submitted through the regional OLE division for approval.

### IMPORTANT

**FUNDING IS ALWAYS DEPENDENT UPON CONGRESSIONAL APPROPRIATIONS AND IS SUBJECT TO CHANGE OR MODIFICATION. BEST EFFORTS WILL BE MADE TO TIMELY NOTIFY ELIGIBLE STATES AND TERRITORIES OF THE AVAILABILITY AND APPROXIMATE AMOUNT OF ALLOTMENT FOR EACH STATE OR TERRITORY. OLE DOES NOT AND CANNOT GUARANTEE THAT APPROPRIATIONS WILL NOT BE MODIFIED OR THAT THE AMOUNT AWARDED TO A STATE OR TERRITORY WILL NOT BE MODIFIED AFTER IT IS INITIALLY OFFERED.**

Application packages are evaluated on:

- ✓ Adequate funds appropriated?
- ✓ Completeness of application, i.e. are all documents attached? Are all questions answered?
- ✓ Timeliness of application? Was it submitted within the proper time frame?
- ✓ Does the application contain the essential elements of the agreement with the regional OLE office?



- ✓ Does the application accurately describe the Federal enforcement priorities as determined by the OLE region?
- ✓ Does the application adequately describe the work to be done as it relates to the priorities?
- ✓ Does the application otherwise meet all of the required-language requirements of the program?
- ✓ Have any extraneous provision been added? If so, why and what relevance does it have to the JEA?
- ✓ Are the terms of the work to be performed adequately described to permit proper reporting and tracking?
- ✓ Has the OLE SAC reviewed the application package and concurred with the request?
- ✓ Are the financial terms in line with OLE's allotment?
- ✓ Are all of the cost calculations accurate?
- ✓ Is there adequate supporting documentation for the figures entered in the cost calculations?
- ✓ Are the cost calculations understandable and correct?
- ✓ Do the cost calculations for direct services roughly equal those of the direct purchases?
- ✓ Will the designated work be done within the available period of funding?
- ✓ Are there any other relevant issues to be considered?

JEA's meeting these requirements and criteria will normally be approved for further processing, provided adequate funds are available to fund the JEA.

## ROLES AND RESPONSIBILITIES

### Special Agents in Charge (SAC) [Some duties may be delegated]

- ✓ Meet quarterly with the NMFS regional administrator and NOAA General Counsel to discuss Federal fisheries enforcement issues
- ✓ Meet with councils, commissions, and State partners as necessary to discuss and identify Federal fisheries enforcement issues
- ✓ Develop a system for identifying Federal enforcement priorities and needs
- ✓ Identify Federal enforcement priorities and needs
- ✓ Communicate those enforcement priorities to the appropriate NMFS officials, OLE leadership, councils and commissions, and State marine conservation officials.
- ✓ Determine what level of assistance will be required to meet the priorities and needs.
- ✓ Negotiate with State enforcement partners to determine if the State is willing to participate and, if so, what resources can be brought by or will be needed by the State to meet those needs
- ✓ Determine, in conjunction with the State, the appropriate plan of operations to accomplish OLE's goals
- ✓ Assist the State in preparing the JEA application package
- ✓ Review the completed application package using the evaluation criteria
- ✓ Note approval of the application
- ✓ Follow-up to insure that application is received at Headquarters

- ✓ Assist Headquarters staff as needed
- ✓ Supervise JEA technician or representative
- ✓ Review JEA progress
- ✓ Analyze JEA reporting
- ✓ Communicate with OLE/State on deficiencies/problems/achievements
- ✓ Assume responsibility for overall performance of JEA

### **CEP COORDINATORS/REPRESENTATIVES**

- ✓ Maintain competency and familiarity with JEA program
- ✓ Maintain JEA records
- ✓ Maintain JEA contacts list
- ✓ Communicate as needed with State JEA counterpart/officials
- ✓ Assist as needed in preparing JEA application packages
- ✓ Insure accuracy and completeness of application package
- ✓ Receive reporting
- ✓ Evaluate reporting for compliance with terms of JEA
- ✓ Complete internal tracking/data entry
- ✓ Issue reports as needed
- ✓ Conduct periodic reviews
- ✓ Assist Headquarters as needed

### **HEADQUARTERS PERSONNEL**

- ✓ Maintain JEA records
- ✓ Accept and review JEA application packages
- ✓ Evaluate application packages
- ✓ Notify applicants and OLE divisional staff each completed review step
- ✓ Forward completed packages for final approval
- ✓ Ensure that payments are made according to JEA
- ✓ Monitor funding levels to ensure adequate funding
- ✓ Adjust allotments as necessary
- ✓ Prepare and conduct review of State and territorial partners

### **STATE/TERRITORIAL PARTNERS**

- ✓ Meet regularly with OLE divisional managers
- ✓ Discuss local and Federal enforcement strategies and priorities with OLE
- ✓ Determine whether JEA program will assist in meeting State needs while providing a valuable service to the Federal government
- ✓ Determine what resources are available or are needed to meet State needs
- ✓ Determine what resources are available or are needed to support Federal priorities if JEA is sought
- ✓ Determine manpower requirements for State needs and JEA, if sought
- ✓ Discuss manpower and resource capabilities with OLE divisional manager to determine whether it is feasible to enter into JEA
- ✓ If appropriate, prepare JEA application package and submit

- ✓ Maintain proper JEA records
- ✓ Maintain and prepare internal controls to ensure that Federal resources are used properly and adequate controls are in place to ensure accountability
- ✓ Use Federal funds as appropriate and called for in JEA
- ✓ Submit reports and purchase vouchers as appropriate
- ✓ Cooperate with OLE review process

## JEA APPLICATION PACKAGE REQUIREMENTS

### APPLICATION

The MSFCMA provides that “the Governor of an eligible State *may apply* to the Secretary [of Commerce] for execution of a joint enforcement agreement with the Secretary that will authorize the deputation and funding of State law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary . . . .” (Emphasis added) Consistent with that language, interested States must submit an application as part of the package of documents making up a proposal.

The application generally consists of several parts: Agency Information; Statistics; the application with signatures; a confidentiality certification; and a capacity certification.

In lieu of the governor of a State signing the application form, that authority may be delegated by the governor to an appropriate State official. An alternative signature block appears for that individual with a certification that such authority has been granted.

The application form also contains a certification that State law allows the State to maintain the confidentiality of information supplied to a State under the JEA as required by law. A negative response will result in restrictions placed upon the information supplied to a State.

Finally, the application contains a provision in which the head of the marine conservation law enforcement agency must certify that the agency possesses the capacity to undertake the work required by the JEA.

### JOINT ENFORCEMENT AGREEMENT

The JEA is the main vehicle through which the CEP is implemented. A State or U.S. Territory agrees to conduct specific marine conservation enforcement work on behalf of the Federal government, in exchange for a corresponding level of financial support.

### DIVISION ENFORCEMENT PLAN

This Divisional Enforcement Plan (DEP) serves as the day-to-day operational framework for a JEA. It contains those Federal priorities that will be targeted for increased enforcement during the JEA. Alterations, modifications, and changes to the DEP are expected as needs and priorities

change during the course of the JEA. As such, the DEP needs to be as flexible as possible and so details can be altered, modified, or changed by written agreement of the parties. No formal amendment to the JEA is required unless substantive provisions of the JEA are to be altered, modified, or changed as well.

## FINANCIAL PLAN

In 2004, OLE endeavored to create a standardized method with which its State/territorial partners would estimate their costs incurred under the proposed JEA for doing Federal enforcement work. The aim of this policy was to ensure fairness not only among the State/territories, the State/territory and the Federal governments, but also to the Federal taxpayer as well. It sought to create a consistent standard to allocate funds equitably and fairly to OLE's partners in exchange for Federal work.

The Financial Plan breaks funding calculations into two parts; the Direct Operations Component and the External Cost Component. Together, these two values ultimately determine the amount of funding a State or U.S. Territory will receive in exchange for their Federal commitment.

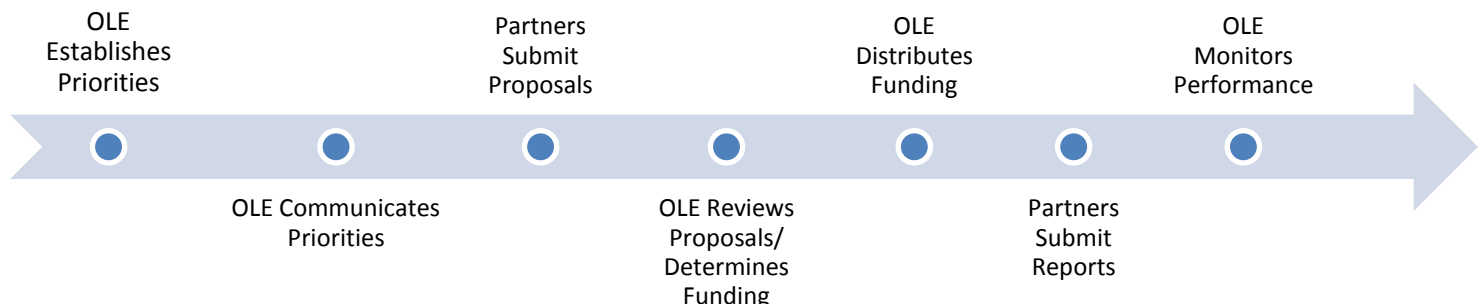
## VENDOR PROFILE INFORMATION FORM

In order to receive payment of JEA funds, States and Territories must complete and submit a Vendor Profile Information form with the application package. **Templates and instructions are no longer found in this Program Manual.**

### TEMPLATES AND INSTRUCTIONS

In order to complete the application process it will be necessary to complete and submit the component parts of the JEA package—the application, the JEA, the DEP, the Financial Plan, and the Vendor Profile form. OLE has taken steps to make the process as easy as possible by providing the ability to complete and submit those documents electronically. Electronic versions of all of the necessary templates and instructions on how to complete those templates can be found on the OLE website, at <http://www.nmfs.noaa.gov/ole/>.

### BASIC ELEMENTS OF JEA PROCESS



**Source: OIG Report, Pg. 21**

## **JEA APPLICATION STEPS**

1. OLE Director determines amount of funds appropriated for JEA program and determines what funds will be offered to each State/Territory.
2. OLE Director mails correspondence to eligible State/Territorial agencies soliciting their participation in the Cooperative Enforcement Program. Copies of the solicitation are sent to the SAC.
3. Agency contacts the SAC to express interest in participating.
4. SAC and agency meet and discuss Federal enforcement priorities that agency will concentrate upon during the agreement term. In addition, the SAC and the agency will identify equipment and property that will be sought.
5. Agency submits a proposal (Application, JEA, DEP, including Financial Plan, Vendor Profile form, and all required documentation) to the SAC.
6. Proposal reviewed by divisional CEP Technician, who makes any necessary changes with the concurrence of the agency.
7. Once completed, JEA is passed on to the SAC for final OLE Divisional Review.
8. SAC forwards complete application to Headquarters Program Manager, who performs HQ review, making any necessary changes with the concurrence of the division and agency.
9. JEA is then forwarded to GCEL Headquarters for review of legal sufficiency. Upon approval, JEA is returned to OLE HQ.
10. OLE HQ notifies applicants and divisional staff of completion of each review step.
11. OLE then forwards JEA to Department of Commerce, Office of the General Counsel through NMFS Management and Budget. Once approved, JEA is returned to OLE HQ.
12. JEA is signed by OLE Director and sent to agency signatory for endorsement. Once signed, JEA is returned to OLE HQ.
13. OLE HQ processes payment pursuant to JEA, posting to State/U.S. territory account within 5-7 business days. This process is explained further in the next section.

## ALLOCATION OF FUNDS

Allocation of funding is a difficult task. The MSFCMA requires that the JEA funds be fairly distributed based upon three basic principles:

1. Federal marine enforcement needs,
2. the specific marine conservation needs of each participating eligible State, and
3. The capacity of the State to undertake the marine enforcement mission and assist with enforcement needs.

The Director determines the amount of JEA funds to be offered to each eligible State/Territory based upon congressional appropriations. Although Congress has funded JEA's for several years and is expected to continue, the OLE cannot and does not warrant that JEA funds will be available and will not and cannot fund JEA's without congressional support.

To assist the Director in determining appropriate amounts, various sources may be used, including official State, territory, NOAA, National Marine Fisheries Service, or other documents. In addition, the Director may use surveys to gather pertinent information.

## CEP OPERATIONS GUIDANCE

### JEA Submission & Processing Procedure

#### General Discussion:

The purpose of this procedure is to provide a reference for the submission and processing of Joint Enforcement Agreements (JEA).



#### Definitions:

**JEA Package** – Consists of the JEA Application document, the Joint Enforcement Agreement document, the JEA Division Enforcement Plan document and the JEA Financial Plan document. A Vendor Profile Form is also required in order to facilitate payment.

#### Solicitation:

A solicitation letter will be sent to each state partner that is eligible to enter into a JEA for the upcoming year. The letter will be sent by the National Program Manager in the month of October. In the letter, information is contained regarding the projected dollar value of a partner's upcoming JEA. The NOAA Divisional Special Agent in Charge (SAC) will also receive a copy of each of the respective solicitation letters for partner agencies within their division. At this time, the state partner can work with the SAC to adjust the solicitation amount to better suit the partner's enforcement capabilities and the need for OLE enforcement.

Any correspondence between a partner agency and a Division SAC regarding solicitation amounts should be communicated to the National Program Manager at the earliest possible time.

#### JEA Package Draft:

The partner agency is responsible for completing an initial draft of their JEA package for review by the OLE. The templates can be found at <http://www.nmfs.noaa.gov/ole/cea.html>. The partner agency must complete a draft for each of the following documents:

1. Application
2. Joint Enforcement Agreement
3. Division Enforcement Plan
4. Financial Plan
5. Vendor Profile Form

All templates are locked for editing and only specific areas can be filled in by a partner. These areas are highlighted in yellow. Not all yellow highlighted areas will be used by all partners. It is imperative that a partner not attempt to unlock, edit or alter any of the templates in any way. If it is determined that a template has been altered, the JEA package will be rejected and the partner will be required to complete an entirely new package.

When the partner agency has completed an initial draft of their JEA package, the partner's JEA point of contact will electronically submit all components of the JEA package to their designated OLE Coordinator. A partner should not apply any signatures to any part of the JEA package at this stage of processing.

#### OLE Division Review:

The OLE Coordinator will review the JEA package for the following criteria:

- ✓ Are all components of the JEA package present (Application, JEA, DEP and Financial Plan)?
- ✓ Are any of the JEA package documents unlocked and/or altered?
  - If so, the JEA package will be rejected and a partner will complete a new package.
- ✓ Are the terms of the JEA sufficient for the OLE Division's enforcement needs?



- ✓ Are all grammar, spelling and punctuation components of the JEA package error free?
- ✓ Are all numeric values (hours, dollars) accurate and properly transposed between each applicable document?
- ✓ SAC Endorsement- the SAC for the NOAA division must submit an endorsement that he/she concurs with the terms set forth in the JEA being submitted. SAC endorsement can be in e-mail or hard copy format.

When the Division Coordinator has completed their review of the JEA package, the Coordinator will electronically send the edited package to the CEP HQ Program Analyst. Each partner's JEA package should be sent in a separate e-mail to avoid confusion and enhance tracking clarity.

#### Headquarters Review:

The HQ Program Analyst will receive each JEA package electronically and document the date of receipt in an internal tracking spreadsheet. The HQ Program Analyst will review the package for the same criteria listed in above in the Division Review Section. In addition, the Program Analyst will format the JEA package to eliminate areas of a document that a partner did not use (i.e. external funding sources, unused hour types).

The Program Analyst will prepare a document routing sheet reflecting the appropriate personnel who will review the JEA package, to include: the HQ Program Analyst, the National CEP Manager, the HQ GCEL attorney. Each party will date and initial the routing sheet when their respective portion of the JEA review is complete.

When the JEA package has been edited and the formatting changes are made, the Program Analyst will print a copy of the complete JEA package and forward it to the National Program Manager for review. When the Program Manager clears the JEA package, it will be returned to the HQ Program Analyst to track the program clearance in an internal tracking roster.

The HQ Program Analyst will forward the JEA package in hard copy to the appropriate GCEL Attorney for a legal sufficiency review. The GCEL attorney will work with the HQ program Analyst to clarify any issues. When the GCEL review is complete, the attorney will return the cleared JEA package to the HQ Program Analyst for final preparation.

#### JEA Execution:

The HQ Program Analyst will incorporate any agreed upon changes to a JEA package document into the electronic master copy. When the JEA package is finalized, a single Adobe PDF document will be created incorporating all JEA package documents in the following order: Application, JEA, DEP, Financial Plan. The PDF document will be locked and encrypted to ensure the integrity of the content. The HQ Program Analyst will electronically forward the cleared, PDF JEA Packages to the appropriate CEP Division Coordinator.

The CEP Coordinator is responsible for transmitting the PDF JEA Package document to the respective partner agency who will print out a finalized, hard copy of the JEA package.

The partner agency will apply signatures to the Application, the JEA and the DEP in the appropriate areas. The signed, hard copy document will be returned to the appropriate CEP Coordinator who will ensure that all partner signatures are intact. The CEP Coordinator will also obtain their SAC's signature on the DEP(s). When all applicable signatures are obtained, the CEP Coordinator will send the executed hard copy JEA package to the HQ Program Analyst.

The HQ Program Analyst will ensure that all components of the JEA package are present and that all signatures appear in the appropriate locations of the JEA package. The HQ Program Analyst will then affix the document routing sheet to the JEA package and forward the package to the OLE Director for signature.

When the OLE Director has executed the JEA, the HQ Program Analyst will scan a copy of the signed document and upload the scanned copy to the appropriate partner's folder on the internal JEA portal. The HQ Program Analyst will also forward a signed electronic copy of the JEA package to the appropriate coordinator via e-mail who will in turn forward the electronic scanned copy of the JEA package to the respective partner.

The HQ Program Analyst will forward the completed JEA package to the OLE budget office for processing of the JEA payment.

### **JEA Direct Purchase Documentation Submission Procedure**

#### **General Discussion:**

The following procedure is to be used by OLE CEP Coordinators when submitting documentation of a partner's direct purchase item(s) bought with JEA funds to OLE HQ.

#### **Definitions:**

For this procedure document, the following terms will apply as defined:

1. *Proof of Purchase* – will refer to receipts, purchase orders, contracts, invoices or other documentation that verifies the purchase or encumbrance of JEA funds toward the purchase of an item agreed to in a JEA.
2. *Line Item* – will refer to an item or service that is specifically listed in a partner's JEA.

#### **Guidelines:**

- ✓ Submit proof of purchase documentation ONLY for line items that are listed in a partner's JEA. Do not submit proof of purchase to HQ for items purchased out of a partner's overhead funding. A partner may submit proof of purchase from overhead

funding to the OLE Division staff for accountability purposes; however HQ will not accept these documents.

- ✓ Before submitting a proof of purchase to HQ, the CEP Coordinator will verify that the proof of purchase was for an item listed in the JEA.
- ✓ The CEP Coordinator will compose an e-mail to the CEP intern with a cc to the CEP Program Analyst and CEP Manager with the proof of purchase attached. In the body of the e-mail, the CEP Coordinator will list what JEA line item each proof of purchase is attributed to.
  - Example: If the proof of purchase lists police lights and the JEA line item listed a fully equipped patrol vehicle, the CEP Coordinator would associate that proof of purchase with the fully equipped patrol vehicle.
- ✓ If the proof of purchase being submitted was for an item agreed to under an amendment to a partner's JEA, the CEP Coordinator will annotate which amendment the proof of purchase was agreed to under in the body of the e-mail composed to the aforementioned CEP HQ staff.
- ✓ The proof of purchase will be accompanied by a standard JEA monthly report where the line item reflected in the proof of purchase is listed in Direct Purchase area of the monthly report. A proof of purchase with no corresponding monthly report will not be accepted by HQ.
- ✓ The CEP intern will upload the proof of purchase to the appropriate partner's JEA folder for the respective JEA year. The CEP intern will also update the applicable HQ Reporting Sheet Excel workbook to reflect the partner's purchase against their agreed upon line items.

Please ensure that all CEP partners are aware of this information and adhere to the procedure. If you need clarification, contact the CEP National Program Manager and/or the CEP Program Analyst.

### **JEA Amendment Processing Procedure**

#### **General Discussion:**

The following procedure is to be used when the need arises to amend an open Joint Enforcement Agreement between NOAA/OLE and a CEP partner agency. A JEA can only be amended if the JEA has not already expired. For this reason, all proposed amendment drafts must be received by OLE HQ at least 30 days prior to the expiration of the JEA to ensure sufficient processing time.

**Note:** If a JEA has expired, no exceptions will be made regarding the execution of an amendment and the partner agency will be responsible for the terms of the JEA as they were stated when the JEA expired and any consequence as a result of failing to meet the terms of the JEA (i.e. return of funds). It is the responsibility of the partner agency to insure that proposed amendments are received by OLE in a timely manner.

#### Amendment Processing Steps:

1. A partner agency should work with their respective OLE Division CEP staff to identify the terms and framework for a proposed amendment. A draft amendment should be prepared using the standard JEA amendment template, available at: <http://www.nmfs.noaa.gov/ole/cea.html>.
  - a. The draft amendment should clearly state what the specific terms of the amendment will be by providing what the original JEA terms were and then providing the amended terms (i.e. end dates, equipment purchases, etc...). Also, a valid explanation of why the amendment is necessary should be stated.
    - i. *“Maryland’s 2009 JEA will expire on 9/30/10. In order for the state to complete all agreed upon direct purchases, a 90 day extension to the JEA is necessary. The amended expiration date is 12/30/10.”*
  - b. Dollar values, hours obligations and other analytical elements should be laid out in an intuitive format showing original values vs. amended values with an amended total, when applicable.
    - i. *Original dockside obligation: 1,000 hours, Amendment Term: 500 additional dockside hours, Amended Dockside Obligation: 1,500 hours.*
2. As part of our ongoing effort to enhance accountability in our Joint Enforcement Agreements, we have developed a new standard that is to be incorporated into all future JEA amendments submitted to HQ for review. Partners who wish to amend a portion of their JEA will now be required to also provide a brief, concise justification as to the need for the amendment. Refer to the highlighted section below for an example of formatting and style to be used.

#### **JUSTIFICATION:**

□ The DPNR currently has four (4) patrol vessels in need of repair. This reduction of vessels, which consists of more than half of DPNRs fleet, drastically reduces at-sea patrol efforts.

□ At the expiration of the 2010 JEA, DPNR will have unmet operational hours due to the inoperability of these vessels and will be unable to fulfill its required hours.

3. OLE Division staff will submit the proposed amendment draft in MS Word via e-mail to the HQ CEP Program Manager and CEP Program Analyst for review.

- a. The HQ CEP Program Manager will review the proposed amendment for programmatic sufficiency and advise the Division CEP Manager and Coordinator if changes are necessary.
  - b. The HQ CEP Program Analyst will review the proposed amendment for analytical sufficiency and advise the Division CEP Manager and Coordinator if changes are necessary or if additional justification is required (i.e. receipts or monthly reports).
  - c. The NOAA GCEL Counsel will review the proposed amendment for legal sufficiency and advise the HQ and Division CEP Manager and Coordinator if changes are necessary.
4. When the above listed HQ parties have reviewed and cleared the proposed amendment, the OLE HQ Program Analyst will send a PDF copy via e-mail of the cleared amendment to the OLE Division CEP Manager and Coordinator who will in turn forward the cleared amendment to the state partner for final signature.
5. The partner agency will sign the amendment and submit the original signature copy to their respective OLE Division staff before the expiration of the JEA. The OLE division staff will in turn forward the original signature hard copy to OLE HQ Program Analyst's attention. The partner agency and OLE Division staff must work jointly to insure that the signed copy reaches HQ prior to the expiration of the JEA. Amendments signed only by the partner agency that are received after the JEA has expired will not be executed and the amendment will be ineffective. The partner agency representative's signature AND the OLE Director's signature must appear on the amendment before the JEA expiration date for the amendment to be effective.
6. The CEP HQ Program Analyst will obtain the Director's signature on the amendment, thereby executing the terms therein.
7. The HQ CEP Program Analyst will scan the executed amendment and upload it to portal in the respective partner agency's folder for the appropriate JEA year. The Program Analyst will then send an e-copy of the executed amendment via e-mail to CEP Division Coordinator and Manager for their files.
8. The CEP HQ Program Analyst or the HQ CEP intern will reflect the terms of the executed amendment on the HQ analysis sheet for the appropriate JEA year and file hard copy amendment in the appropriate partner agency's JEA folder.

Below are two lists of examples reflecting situations that DO require an amendment to a partner's JEA and situations that DO NOT require an amendment to a partner's JEA.

**Situations that DO Require a JEA Amendment:**

- ✓ Any change in direct purchase line items agreed to in a JEA
  - Example: addition or subtraction of a line item

- ✓ Any change in the opening or closing date of a JEA
- ✓ When additional funding is received from any funding source (CEP, NOS, PRD, SF)
- ✓ Any time operational hours are added, subtracted or shifted from one category to another
  - Example: Dockside hours being shifted into at-sea hours
  - An amended financial plan must be submitted to justify the work being modified
- ✓ Any shift in funding from operations to direct purchase or vice versa
- ✓ The addition, subtraction or modification of a Major Program priority where a partner received funding from an alternate source (i.e. TRat, Sector, ALWTRP, Sanctuary)
- ✓ A change in reporting requirements aside from the standard requirements set forth in the JEA
- ✓ Any other situation that will change a substantive term of the JEA

**Situations that DO NOT Require a JEA Amendment:**

- ✓ Rearranging the order of priorities previously agreed upon in the JEA
  - Only complete an amended DEP for SAC and partner signature
- ✓ Adding or subtracting a general JEA priority
  - If the volume of hours in a particular category (dockside, at-sea) changes as the result of the addition or subtraction of a priority, then an amendment is required. If no hours change occurs, only complete an amended DEP.

If assistance is needed drafting an amendment or need clarification as to whether or not an amendment is warranted, contact the CEP National Program Manager or the CEP Program Analyst.

**Joint Enforcement Agreement Final Report Criteria**

**General Discussion:**

The purpose of this document is to set forth basic criteria that a state partner should follow when completing a final or “close out” report upon the expiration or termination of a Joint Enforcement Agreement. The following language was taken from a standard JEA, Section XIV, Measurement of Performance Objectives:

*“Where this [JEA] agreement covers a one (1) year period, the AGENCY will also prepare and submit a final report to the OLE within 90 days of the expiration or termination of this JEA. The final report will contain a summary of all of the activities set forth in the monthly reports, any other measurable performance objectives, and any other relevant information requested by the*

*OLE or desired by the AGENCY that explains or highlights activities undertaken under this JEA.* “

(Section XIV. Paragraph B)

*“In the event this JEA is for a two (2) year period, the AGENCY will produce an annual report for each year and forward to the OLE within 90 calendar days of the anniversary of the effective date. A final report will be forwarded within 90 calendar days of the expiration or termination of this JEA.”*

(Section XIV. Paragraph C)

An electronic version of the final report template and instructions on how to complete the template can be found on the OLE website, at <http://www.nmfs.noaa.gov/ole/>.

*Any questions or concerns about a JEA final report should be directed to the NOAA OLE representative in the partner’s geographic area.*

### **CEP Coordinator Final Report Review**

JEA Coordinators are required to conduct an analysis of the partner’s final report and submit it to HQ along with the report. A template has been created and should be used.

Sharing the Coordinator analysis report is a very beneficial course of action and we highly encourage each division share their results with the partners in an effort to enhance communication and increase transparency and accountability.

## **INABILITY TO COMPLETE TERMS OF AGREEMENT**

In the rare event that a State is unable to complete the terms of the JEA, either in completing the hours agreed to, or making the purchases intended in the JEA, there are several options to resolve the difficulty, and there are several consequences for failure to complete the terms.

All of the options discussed below are dependent upon an approved amendment submitted to OLE Headquarters, through the OLE Division, at least 30 days prior to the expiration of the JEA.

### **OPTIONS TO RESOLVE**

#### **Hours**

A state’s commitment to complete a certain number of hours during the term of the JEA is fraught with uncertainty from the outset. The terms of a JEA are based on a prediction of the number of hours a state reasonably believes its employees can complete over the term of the



JEA. Most of the time, states not only meet those predictions, but greatly exceed the work the anticipated.

But, occasionally, states have trouble completing their obligations. Staff shortages, pressing needs of the state, the occurrence of natural conditions such as hurricanes or manmade disasters such as the oil spill in the Gulf of Mexico all can have a negative impact on a state's ability to get the work done.

Minor lapses in meeting hours may, at OLE's option, be excused. The Division CEP Managers, after consulting with Headquarters, are authorized to excuse minor lapses. More significant lapses will most likely require modification of the JEA to make up for those hours.

**THERE IS NO HARD RULE FOR THE NUMBER OR VALUE OF HOURS UNMET BEFORE ANY OF THE OPTIONS BELOW ARE IMPOSED.**

Division CEP staff will work with states in order to obtain the best result for the states while protecting Federal funds.

Some of the options available to assist a state:

Extension of the JEA—So long as the JEA has not expired and so long as there is at least 30 days remaining before the JEA expires, OLE may extend a JEA in order for the state to meet its hours obligation. Often, however, this causes a state to have overlapping JEAs that require the state to work on the hourly obligations of each JEA simultaneously. This often has the effect of placing added pressure on resources already strained. To prevent a future situation where a state cannot meet the hourly obligation of the JEA that is overlapped, OLE strongly recommends that a state work on and report its activities on each JEA simultaneously.

Reallocate Hours to Different Activities—Sometime, unmet hours are the result of equipment or personnel shortages. A state may not be able to meet its at-sea obligation because its vessel fleet may be reduced or unavailable. Or, they cannot meet their outreach obligation because its personnel have been called upon to perform more pressing missions.

These problems can be overcome by reallocating the obligation from one priority to another. For example, if a state is unable to complete its at-sea obligation because of equipment shortages, an equivalent number of dockside hours may be substituted, or vice versa. There must be a recalculation of costs based on the old and new obligation. For example, changing from at-sea hours to dockside must take into consideration the cost of 1 hour's operating cost for the vessel and the crew and calculate the equivalent number of hours that can be achieved in dockside enforcement for just the cost of the person.

Reallocate from Hours to Purchases—In rare circumstances, OLE may permit a state to exchange unmet hours for needed purchases. This option will require a calculation of the value

of the hours remaining to be fulfilled. Provided the value of the hours exchanged, plus prior approved purchases does not exceed 50% of the total JEA award, and the purchase is rationally related to the state's marine conservation mission or directly to their JEA obligations, OLE may grant the reallocation.

Return Unused Funds to OLE—The least attractive option may be the harshest. If the JEA has expired and a state has not completed its obligation of hours, the state must return the value of those unmet hours to OLE and the Federal government, unless and the lapse has been excused.

In that event, the value of the unmet hours must be calculated and the state must provide a check, made out to the United States Department of Treasury, in the amount due as soon as practicable following notice by OLE.

#### Purchases of Property or Service

The most common problem faced by many states is the ability to make purchases using JEA funds within the term of the JEA. This is most often not the fault of the agency but is due to complexity in state procurement practices which can be difficult and protracted. One important thing to note is that a state is required to "obligate" the funds for purchase prior to the deadline. See, definition of "Obligate."

Extension of JEA -- So long as the JEA has not expired and so long as there is at least 30 days remaining before the JEA expires, OLE may extend a JEA in order for the state to obligate funds earmarked for purchases. The extension should not exceed what is reasonably needed to obligate or spend the funds.

Two-Year JEA —In rare circumstances, OLE may grant a state an additional year to complete purchases. This is generally not encouraged, but OLE recognizes that this may be the only viable option.

In those cases where OLE has agreed to a two-year JEA, the JEA must provide that all work has to be completed during the first year of the agreement and that every effort must be made to spend or obligate the purchase funds within the first year. If necessary, due to unusual delays in the procurement processes of the state, the second year may be used to expend the funds on the purchases.

Generally, two year agreements are not extended beyond the term of the JEA.

Reallocate —A state may opt to reallocate direct purchase funds to operational work. For example, a state may take funds earmarked for equipment purchases and move those funds to pay for personnel and/or vessel services to complete at-sea or dockside work on OLE priorities.

Return Funds —A state may chose to return funds not obligated prior to the expiration of the JEA. A check made out to the United States Treasury should be forwarded to the OLE. In the event

that a state is unable to spend or obligate purchase funds prior to the expiration of the JEA, the funds MUST be returned to OLE.

*Consequences of Inability to Meet Terms of Agreement*

The JEA does not include any provision that spells out the consequences of a state's inability to complete the terms of the JEA. However, OLE may consider those facts when considering funding for future agreements, a need for increased monitoring of performance, and/or whether a performance review is warranted.

Future Funding—A state's inability to complete the terms of an agreement may be considered when deciding future funding. Funds for operational and/or direct purchases in the next JEA cycle may be adjusted based on the facts and the recommendations of Division CEP managers. Reducing a state's funding is an extraordinary measure that should not be done without due consideration of all factors.

Increased Monitoring—The OLE requires periodic reviews of a state's progress and performance on the JEA. One option available to CEP managers is to require increased monitoring of a state in order to insure that hours are being worked appropriately or purchases made in a timely manner.

Performance Review—OLE may require a state to submit to a performance review for cause if OLE believes that a state may have internal problems that are preventing it from completing its obligations. The object of the review should not be punitive, but should be designed to identify obstacles to efficient implementation of the JEA and the state's ability to complete its obligations.

## MAJOR PROGRAMS

Occasionally, OLE will partner with other NOAA units to transfer money to a State enforcement agency for specific work in those program areas or will fund that work out of JEA funds. Examples of NOAA programs where funds may be transferred to a State agency may include the National Marine Sanctuaries Service, the Protected Resources Service (usually the Atlantic Large Whale Take Reduction Plan (ALTRWP)) or the Sustainable Fisheries Service Trawl Rationalization Plan (TRat) or Sector Enforcement).

**THERE MUST BE A VALID JOINT ENFORCEMENT AGREEMENT WITH THE JURISDICTION TO WHICH THE MAJOR PROGRAMS FUNDS ARE TO BE TRANSFERRED THAT COVERS THE PERIOD CONTEMPLATED BY THE ADDENDUM.**

## PERFORMANCE REVIEW

Consistent with sound management practices, periodic reviews and inspections must be performed in order to ensure that the CEP meets the needs of the OLE mission, doesn't unduly burden State resources and efforts, and provides a valuable supplement to OLE's personnel.

In March 2003, the Department of Commerce, Office of the Inspector General, Office of Inspections and Program Evaluations, (OIG) issued a report titled *NMFS Should Take a Number of Actions to Strengthen Fisheries Enforcement*, Final Inspection Report No. IPE-15154, March 2003. One of the central issues identified regarding the Cooperative Enforcement Program (CEP) was the need for periodic review of the program--"NMFS should develop guidance for and conduct periodic, on-site program reviews to measure and verify internal program controls and program accomplishments." In addition, to this broad, sweeping program review, the OIG recommended more frequent, less comprehensive monitoring by OLE Special Agents in Charge—"In an ongoing monitoring program, special agents in charge would be responsible for periodically preparing and submitting a written report to headquarters on State performance."

A Performance Review Guide has been prepared and forms the basis for reviews of States/territories receiving JEA funds. A copy of the guide can be found on the OLE website.

## PROGRAM EVALUATION

### DESCRIPTION.

Program evaluations are evaluations of program operations, usually at more than one organizational level, to measure actual outcomes and results against program goals and objectives, including OLE priority objectives; assess application of OLE policy; and examine program execution against established standards.

### PURPOSE.

The purpose of program evaluations is to establish a process to ensure that programs are operated and executed OLE-wide in accordance with established standards, such as OLE priority objectives, laws and regulations, management controls, and program policies, procedures, goals, and objectives.

### EVALUATION CRITERIA.

The following core elements will be used by evaluation teams to design and plan program evaluations. The evaluation team may supplement these criteria with additional areas for analysis

to meet other specific purposes. Suggested coverage within these elements can be amended based on the nature and scope of the evaluation.

### Headquarters:

Headquarters formulates OLE policy, guidance, and plans; sets priorities; coordinates program activities; and assesses program performance. Within this context, the criteria for Headquarters program evaluations are:

- ✓ **Development of policy, guidance, and plans;** e.g., timeliness, clarity, and adequacy of policy and implementing regulations, program guidance, and memoranda; OLE-wide consistency in interpretation/application of OLE policy.
- ✓ **Coordination of program activities** with other OLE and Division offices and outside organizations; e.g., timeliness, significance, and impact on program effectiveness.
- ✓ **Program assessment;** e.g., type, frequency, results.
- ✓ **Effectiveness in meeting goals and objectives;** e.g., accomplishment of program goals and objectives, annual plans, Secretary's and OLE priority objectives, and OLE mission; deviations to plans; impediments to meeting goals.
- ✓ **Improvements in program execution;** e.g., completion of corrective actions from previous evaluations; increase in program efficiency; cost savings.
- ✓ **Ability to meet the needs of the program's customers;** e.g., knowledge of the program's customers and their needs; responsiveness; feedback from customers.
- ✓ **Processes,** if required, e.g., system operations, workflow, timeliness, impediments.

### Division/Regional Offices

Division/Regional offices implement national policies; appraise and monitor their operations to assure effectiveness and goal attainment; and recommend to Headquarters revisions in national policies, plans, and procedures. Within this context, the criteria for Division/Regional Office program evaluations are:

- ✓ **Implementation of policy and guidance;** e.g., Division/Region-wide consistency in interpretation and application.
- ✓ **Effectiveness of program** execution and compliance with laws, regulations, policies, and procedures; e.g., timeliness and adequacy of program activities; coordination with other OLE and Department offices and outside organizations; Division/Region-wide consistency in program execution; outcomes and accountability.
- ✓ **Effectiveness in meeting goals and objectives;** e.g., accomplishment of Division/Regional work plans, OLE priority objectives, and OLE mission; deviations to plans; impediments to meeting goals.
- ✓ **Improvements in program execution;** e.g., program review and corrective actions; recommendations to Headquarters for revisions in policies, plans, and procedures; increase in program efficiency; cost savings.

- ✓ **Ability to meet the needs of the program's customers;** e.g., knowledge of the program's customers and their needs; responsiveness; feedback from customers.
- ✓ **Processes,** if required, e.g., system operations, workflow, timeliness, impediments.

#### **Other Criteria.**

In addition, programs may be evaluated by:

- ✓ Alternative Program Evaluations required by program authorities, OLE policy other than this Part, and the Departmental Manual;
- ✓ Comparison of actual program results with performance goals established in the annual performance plan;
- ✓ Special evaluations, the criteria for which may be determined by the Director.

#### **Process Evaluations.**

A program evaluation may include an examination of the processes of a program.

#### **Evaluation Schedule.**

The CEP should be scheduled for a program evaluation each year. A report detailing the evaluation should be prepared in a timely fashion.

## **CEP IDENTIFICATION CARD POLICY**

### **Section 1. Purpose.**

This section prescribes a uniform policy and procedure for the issuance of special identification cards for State/Territorial/Commonwealth marine conservation law enforcement officers who have been granted authority to perform law enforcement duties of the Secretary of Commerce pursuant to a Cooperative Enforcement Agreement (CEA) with a state/territorial marine conservation law enforcement agency; prescribes a uniform identification card; prescribes the training required; and, prescribes other requirements and conditions for the issuance of such cards.

### **Section 2. Policy.**

It is in the interest of the Office of Law Enforcement (OLE), State, Territorial, or Commonwealth marine conservation agencies operating under a CEA, and members of the public that officers of those marine conservation agencies while performing those duties are properly identified and the scope and extent of their authority is plainly stated. For that reason, it is the policy of the OLE to authorize the issuance of appropriate identification cards. For

clarity and convenience, the official identification cards referred to herein will be called “CEP ID cards.”

### Section 3. Definitions.

The following definitions apply for the purpose of this Memorandum:

- a. **CEP.** Cooperative Enforcement Program. The CEP is the official designation for the program in which congressional appropriation for marine conservation law enforcement is provided.
- b. **CEA.** Cooperative Enforcement Agreement. The CEA is a bilateral agreement between the Director, OLE, and the head of a state or territorial agency which sets forth authorities, powers, and conditions for officers who will perform marine conservation law enforcement work on behalf of the Secretary of Commerce.
- c. **JEA.** Joint Enforcement Agreement. The JEA is the written instrument in which the OLE and a state or territorial agency agree on the type and amount of work the state or territorial agency will perform over a certain period in exchange for funding of activities.
- d. **OLE.** Office of Law Enforcement. The OLE is the enforcement arm of the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service.
- e. **Division.** Indicates a major organizational component of the OLE. It can mean either, the Northeast, Southeast, Southwest, Northwest, Alaska, or Pacific Island Division, unless specifically noted.
- f. **State, Territory, or Commonwealth:** A State, Territory, or Commonwealth of the United States.
- g. **Officer.** Marine conservation law enforcement officer who ordinarily carries a firearm and a badge, has full arrest powers, and are authorized and paid to enforce criminal and civil laws of the state related to living marine resource management, protection, and conservation.
- h. **Agency.** The term “agency” means a State, Territorial, or Commonwealth marine conservation law enforcement agency that has a CEA with the OLE.

### Section 4. General Requirements.

- a. The authority for states, territories, or commonwealths to issue CEP ID Cards may be granted with express written permission of the Director, OLE.
- b. Agencies which have been granted the authority to issue CEP ID Cards may not issue those cards except as provided in this policy.
- c. Neither the agency nor the OLE are under any obligation to issue CEP ID Cards. The decision to authorize agencies to issue CEP ID Cards is left to the sole discretion of the Director, OLE. The decision to issue cards, once authorized, is left to the discretion of the head of the agency.
- d. CEP ID Cards are valid for 5 years, unless otherwise provided.
- e. All CEP ID Cards issued under the authority of the OLE are the property of the agency and must be surrendered upon separation from the agency or upon demand.



- f. CEP ID Cards will only be issued to and valid for officers employed by agencies who have a valid CEA with OLE.
- g. The agency must insure that officers are responsible for the proper use and safekeeping of their CEP ID Card and CEP ID Cards must be kept under the officer's control at all times.
- h. The CEP ID Card should be used, as appropriate, for the successful completion of the law enforcement mission. CEP ID Cards may be used as identification only for official purposes. Any other use of the card is prohibited. Agencies are encouraged to adopt official policies which prohibit the use of any CEP ID Card in any manner not authorized by this policy.
- i. CEP ID Cards may only be issued to sworn, full-duty officers of the agency who have completed all mandatory training, including any required JEA training.
- j. Officers who do not possess full law enforcement powers, who are on limited duty, who are suspended from duty, who are medically or physically incapable of full duty, or have had their powers removed may not possess a CEP ID Card. The agency must take possession of cards issued to those individuals and maintain them in a secure location.
- k. The CEP ID Card is the only Federal identification authorized for officers performing JEA activities and **officers must have and display upon request valid, agency-issued credentials when carrying the CEP ID Card.**
- l. CEP ID Cards or ID cards which identified NOAA OLE or NMFS as an authorizing entity for federal authority issued prior to the effective date of this policy may be used until replacement cards are issued by the agency. The agency must collect and destroy a previously issued CEP ID Card prior to issuing a new card under this policy.
- m. CEP ID Cards are considered a credential and must be treated in the same manner as agency-issued credentials.
- n. Lost, stolen, or misplaced cards must be reported to the agency, the Division, and OLE/HQ as soon as practical.
- o. Possession of the CEP ID Card does not grant the right to carry a firearm in contravention of any Federal, state or local law. The terms of the CEA provide whether or not the officer may carry a firearm during scheduled JEA activities.

#### Section 4. Miscellaneous.

- a. Badges which make reference to or purport to be connected to the CEP and the JEA are not authorized and are strictly prohibited and may not be issued or possessed.
- b. Shoulder patches for uniforms that reference the CEP may be authorized upon written consent of the Director, OLE.
- c. Any other insignia, emblem, pin, or device that relate to the CEP are prohibited unless approved by the Director, OLE.

#### Section 5. Card Control and Accountability.

- a. CEP ID Cards may be issued by the agency provided written permission is granted to the agency by the Director, OLE.

- b. A temporary, paper card may be issued for a short period of time, not to exceed 30 days, so long as the same information required below appears on the card. A temporary card must be collected upon issuance of a permanent card.
- c. The agency will supply the necessary equipment and materials to issue such cards.
- d. The agency will maintain all official records of cards issued under this program and will maintain a master list of all cards issued and their status.
- e. An electronic spreadsheet will be developed and will include the following information:
  - 1. Card Number
  - 2. Name of Officer
  - 3. Date issued
  - 4. Date returned
  - 5. Reason for return
  - 6. Remarks
- f. The agency will provide a copy of the spreadsheet to OLE/HQ and the division.
- g. Each officer who is issued a CEP ID Card must sign a receipt for the card. The original receipt will be retained by the agency.
- h. Agencies must conduct an annual audit of CEP ID Card records and submit a written report to OLE/HQ, with a copy to the Division. The report will include a list of all active and inactive CEP ID Cards.
- i. Agency records related to the issuance of CEP ID Cards will be made available for inspection upon request and are subject to review by OLE at any time.

## **Section 6: Processing CEP ID Cards**

- a. All permanent CEP ID Cards will be hard, white, PVC plastic or similar quality card.
- b. Each CEP ID Card will be pre-numbered, sequentially, beginning with the abbreviation for the OLE division in which they are located, followed by the two-letter designation for the state issuing the card, and then a 3-digit number beginning at 001. i.e., "NED MA001."
- c. The agency will create the cards using digital technology.
- d. Each CEP ID Card will bear a digital color photograph of the bearer and list personal data: full name, height, weight, hair color, eye color, and sex.
- e. In the event it is necessary to issue a replacement CEP ID Cards, the records of the Agency will include an explanation for the necessity of replacement and must be approved by the head of the agency. The agency spreadsheet will cross-reference original and replacement card numbers.

## **Section 7. Card Format**

Front:

In a banner at the top of the card, in a banner, gray in color, the words:

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service

Superimposed over OLE Badge centered on card are the highlighted words:

Officer's Full Name, i.e., "John W. Smith"

Employing Agency Name, "Maryland Department of Natural Resources"

Below Officer's Name:

"Is a duly deputized law enforcement officer authorized to perform certain Federal law enforcement duties on behalf of the Secretary, U.S. Department of Commerce."

"Valid only if presented with law enforcement credentials of the employing agency."

Expires MM/DD/YYYY

[Sequential Number]

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service

John W. Smith  
Maryland Department of Natural Resources

Is a duly deputized law enforcement officer authorized to perform  
certain Federal law enforcement duties on behalf of the Secretary,  
U.S. Department of Commerce.

Valid only if presented with law enforcement credentials of the employing agency

Expires MM/DD/YYYY

NED MD001

Reverse:

“The person identified above is duly deputized and is authorized to enforce the law enforcement provisions of the Magnuson-Stevens Fisheries Conservation Management Act, and any other marine resource law enforced by the Secretary of Commerce which is specifically authorized by the current Cooperative Enforcement Agreement between NMFS, Office of Law Enforcement and the employing agency.”

“Property of the [Name of Agency]. Must be surrendered upon termination of employment or upon demand. If found, please call [agency phone].”



**Name:**

**Height    Weight    Hair    Eyes    Sex**

The person identified above is duly deputized and is authorized to enforce the law enforcement provisions of the Magnuson-Stevens Fisheries Conservation Management Act, and any other marine resource law enforced by the Secretary of Commerce that has been specifically authorized by the current Cooperative Enforcement Agreement between NMFS, Office of Law Enforcement and the employing agency.

Property of the [Name of Agency]. Must be surrendered upon termination of employment or upon demand. If found, please call [Agency Number].

## CEP FAQ

### **Topic:      Modification to DEP**

**Question:** How would you like us to handle DEP changes? Do you want to develop a new DEP and have the parties re-sign or does a memo attached work the same?

**Guidance:** No, DEP's that need to be revised should be done over. Each party should sign the revised DEP. Just be sure to let us know which one it replaces.

### **Topic:      Modification of Expiration Date**

**Question:** If a JEA is close to expiration and the terms of the JEA have not been met, either hours are not complete or purchases have not been made, what is the proper method of drafting an amendment to extend the length of the JEA in order to complete the requirements? Should the amendment extend the expiration date into the future, or should the amendment retroactively amend the start date of the JEA to an earlier date?

**Guidance:** The preferred method is to extend the expiration of the JEA into the future to allow the work to be done or purchases to be made. This has to be done 30 days before

the JEA expires. Amending the JEA to retroactively alter the start date is the least desirable option and allows the implication that the deadline to extend was missed and this is a back-door attempt to get around the terms of the JEA. Those requested amendments may be rejected.

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**Topic: Submission of Receipts**

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**Question:** What is the proper way for a partner and NOAA division to document receipts for direct purchases made under the terms of the JEA? Should partners submit receipts for purchases made out of overhead funds or should receipts only be submitted to HQ for line item purchases that are agreed upon in the JEA? Will a receipt be rejected by HQ if the purchase is not reflected on the partner's monthly report? Should the CEP coordinator cross check the receipts and monthly reports to ensure that a purchase is a JEA line item and also that the receipt matches the language used in the monthly report AND in the JEA (i.e. associate a brand name purchase with the language used in the JEA)?

**Guidance:** States should submit receipts for property or services that are listed in the JEA and are paid for as a documented direct purchase. Purchases made out of overhead funds do not have to be reported to HQ. Receipts for those types of purchases may be rejected. Where an item is paid for out of a combination of overhead and direct purchase funds, the purchase should be reported to HQ, with an explanation of the division of funding sources. Purchases must also be documented on the appropriate monthly report. A receipt may be rejected if the purchase for that receipt does not appear on the monthly report. CEP coordinators should carefully check receipts and monthly report for accuracy and to confirm that the purchase is one anticipated in the JEA.

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**Topic: Amendments Generally**

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**Question:** Under what circumstances must a JEA be "amended" and what changes need an amendment?

**Guidance:** Significant changes to the terms of the JEA require a formal recording. Any time a provision in the JEA is changed in a substantive manner, it should be reduced to writing. The formal instrument to record such changes is called an "Amendment." More minor alterations or explanations of terms may be handled less formally in the form of a memorandum.

Examples of changes requiring a written amendment may include:

- 🔵 change to the number of hours to be performed
- 🔵 modifying the expiration date of the JEA
- 🔵 different/additional/less equipment, property, or services to be purchased
- 🔵 different/additional priorities
- 🔵 additional money transfers

Amendments are reviewed by GCEL. However, before any amendment can be processed, the SAC, or their designee, must submit a brief written statement indicating that the proposed amendment has been personally reviewed by the SAC and is consistent with the Division enforcement plans, that the change is needed in

order to accomplish a priority, or that the purchase of a new item of equipment, property, or service is needed to accomplish a Federal need. The purpose of the written statement is not for approval or denial, but to serve as a written justification for the change to a material term of the JEA.

Once the proposed amendment has been reduced to writing, it must be signed by the Director, or his designee, and the head of the agency, or their designee.

The first amendment to a JEA is numbered as "Amendment One." Each subsequent amendment is numbered to the next progressively higher number. There is no limit to the number of amendments to a JEA.

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**Topic: Amendments for Specific Purchases**

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**Question:** If the JEA specifies a particular item that is to be purchased, i.e. "250 horsepower, Mercury outboard engines," is an amendment required if the item description changes, for example, "275 horsepower, Yamaha engines," but the price remains substantially the same?

**Guidance:** Amendments are required when significant changes, direct operations or purchases, affect the terms of the agreement, i.e., hours reduced, hours redistributed, the actual item, quantity, or costs, etc. In your current case, the only change being made is in the horsepower of the motors; therefore, no amendment needs to be completed. However, please remember that when an amendment is required, it must be submitted prior to the expiration of the agreement.

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**Topic: Surplus Direct Purchase Funds**

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**Question:** A CEP Partner has purchased all of the items or services called for in the JEA. There are additional funds left over. May the partner use that surplus? If so, must there be an amendment? Is there a dollar limit before an amendment is required?

**Guidance:** If a CEP Partner has purchased all items called for in the JEA and has a surplus left over, we encourage the partner to use those funds for the benefit of the agency and its marine conservation mission. Surplus funds of less than \$5000 may be used by the partner for direct marine conservation equipment or services without the necessity of an amendment to the JEA. Amounts over \$5000 will require an amendment to explain how the funds will be spent and the items that will be purchased.

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**Topic: Retroactive Reimbursement**

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**Question:** A CEP Partner purchased equipment or services for its marine conservation mission using State funds. The items were not listed in the JEA and are separate from any items to be purchased with JEA funds. The partner has asked if it can use JEA funds to reimburse the State for those purchases.

**Guidance:** As a general rule, we would discourage retroactive reimbursement for equipment purchases. However, in the right circumstances, we would allow a retroactive reimbursement. The right circumstances must be memorialized in writing and meet the following criteria. First, the items must be directly connected to the partner's marine conservation mission. Secondly, the reimbursement may not contravene our

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50% rule (50% of direct purchase funds may be used in that year to purchase needed equipment or services.) And, lastly, the SAC and Division CEP Manager must approve the reimbursement with a written explanation. An amendment is needed, as well as an amended Financial Plan. Prior approval of HQ is needed for any such reimbursement.

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**Topic: Changes to DEP—Categories of Work**

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**Question:** A CEP Partner and OLE wish to revise a DEP to shift hours between dockside, at-sea, or air obligations. What must be done to accurately change a DEP?

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**Guidance:** If a CEP Partner is merely shifting hours within the same category, i.e. between dockside priorities, no amendment is needed. A revised DEP is required, however. If the hours are to be shifted between categories, i.e., dockside to at-sea, or at-sea to dockside, an amendment is necessary along with a revised DEP and a revised or amended Financial Plan specifically showing the values of the hours shifted and an explanation of the work to be done under the new scheme.

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**Topic: Nature of Program**

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**Question:** Is the CEP considered as financial aid program to the states?

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**Guidance:** No. The disbursement of funds under the JEA does not constitute financial aid to the states. It has been suggested that certain Federal laws and regulations, specifically the Cash Management Improvement Act, 31 USC 3335, which does not allow state agencies to hold Federal funds in state accounts in excess of three day's operating needs, apply to the CEP. The Treasury regulations implementing the CMIA apply only to Federal financial assistance programs. Financial assistance is defined as a transfer of money, property, or services to a recipient to accomplish a public purpose or support or stimulation which is authorized by Federal statute. Grants and cooperative agreements fall under the category of financial assistance. The term "cooperative agreement" as defined in 31 USC 6305 is not to be confused with the term "cooperative enforcement agreement" as used to refer to the relationship NMFS possesses with coast states. The relationship the JEA creates, in fact, is not one of financial assistance as defined above. The principal purpose of the JEA is not merely to provide the state with Federal funds for a public purpose without involvement by NMFS. The purpose is to ensure compliance with Federal fisheries laws and to establish a formal working relationship with the state defining how those laws will be enforced. Under the terms of the JEA, federally deputized state law enforcement officers work alongside NMFS enforcement personnel to enforce Federal fisheries laws and regulations. NMFS does not disburse funds for the purpose of merely supporting or stimulating the state's enforcement efforts, but with the purpose of actively participating in the enforcement of Federal and state fisheries laws and regulations. The disbursement of funds under the JEA does not constitute financial assistance to the states. (GCDOC Fredericks 4/02)

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**Topic: Relationship between NMFS and State**

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**Question:** Is the relationship between NMFS and the state a "cooperative agreement?"

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**Guidance:** No. The relationship between NMFS and the state is not a cooperative agreement as defined in the Federal Grant and Cooperative Agreement Act (31 USC

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6301)(FGCAA). Section 6305 of the FGCAA defines cooperative agreements as those in which the “principal purpose of the relationship is to transfer a thing of value to the State . . . to carry out a public purpose of support or stimulation . . . “ and in which “substantial involvement is expected between the executive agency and the State . . . when carrying out the activity contemplated in the agreement.” While one can argue that “substantial involvement” between NMFS and the state exists in their JEA, the principal purpose is not to support or stimulate a public purpose. The relationship between NMFS and the state does not meet the elements of a cooperative agreement. (GCDOC Fredericks, 4/02)

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**Topic: Purchase of Weapons with CEP Funds**

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**Question:** May a CEP partner purchase weapons (i.e. handguns, long guns, electric shock weapons, etc.) with JEA funds?

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**Guidance:** Generally no. OLE does not believe that weapons of any type should be purchased to supplement the equipment issued by the state agency. This includes handguns, long guns (both shotguns and rifles), and electric shock weapons, such as Tasers. An exception may be granted to this prohibition where a state is hiring new personnel to do Federal work, and as part of equipping those officers, the state must purchase a handgun or other standard issue equipment for the officer. We would likely approve the purchase of a handgun (and perhaps a long gun) if it is a part of the initial equipment issued to a newly hired officer and the state does not have an inventory of weapons already available for issuance. (Jones, 1/07)

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**Topic: Painting of Vessel**

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**Question:** Would the painting of a boat be an acceptable use of direct purchase funds?

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**Guidance:** Probably not. General maintenance, such as painting a patrol boat, would be considered normal maintenance. As such, general maintenance costs should be covered by overhead funds provided to the agency. (Fry, 1/07)

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**Topic: Purchase of Firearms Training Equipment**

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**Question:** May JEA funds be used to purchase firearms training equipment?

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**Guidance:** No. (Jones, 1/07)

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**Topic: State and Local Law Enforcement Agency Eligibility**

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**Question:** May local and State law enforcement agencies with marine units apply for and receive CEP funds?

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**Guidance:** No. Only STATE law enforcement agencies having “marine law enforcement responsibilities” may receive CEP funds. And, only State law enforcement officers with those responsibilities may be deputized to enforce Federal fisheries laws. (FRY, 9.07)

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**Topic: Application by Governor, or Designee**

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**Question:** Must the governor of a state, territory, or commonwealth personally apply for a JEA or may that requirement be delegated to some other official?

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**Guidance:** The governor of an eligible state may apply for a JEA with OLE. The MSA requires

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the “Governor” of a state to apply and we may require that on the application documents. However, the governor could delegate the authority to deal with marine law enforcement issues to the head of the state agency responsible for such enforcement, or some other designated official. The delegation of that authority should be clearly set forth in the JEA application documents. (GCEL Hogan, 8/08)

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**Topic: Use of Overhead Funds**

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**Question:** OLE provides an agency with 35% of the JEA operational amount as overhead. That overhead is intended to help the agency cover the costs for administering the agreement and to provide for basic administrative costs. In some states, the state government is taking all or a major portion of the overhead to cover the State’s costs for unspecified services that may or may not be for the benefit of the agency directly. Are there any restrictions on the use of JEA funds by the State? May require the state to account for the actual services they provide to the agency? May we restrict the use of those funds?

**Guidance:** The states should only use monies transferred to them through JEA’s for work/to cover costs that directly further NMFS’s JEA program and mission (i.e. for the enforcement of federal fisheries laws and regulations). Congress appropriates enforcement funding specifically for fisheries enforcement work. States should not use funds transferred to them under the JEA’s to cover costs that cannot be directly associated to the enforcement work that Congress’ appropriation was intended to fund. The JEA’s do not provide NMFS with the authority to cover costs not associated with the enforcement work the States have agreed to conduct. OLE may add language to the JEA’s limiting the State’s use of funds to activities directly furthering the JEA program/mission (which can include overhead costs). If states are relying on JEA funds to run enforcement/natural resources agency programs not directly related to JEA work, that should stop. (GCDOC Benitez, 6/09)

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**Topic: Contact**

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**Question:** What is a “contact” under the JEA?

**Guidance:** A “contact” is a personal, one-on-one interaction by a state officer performing JEA work with a person engaged in, suspected of being engaged in, or who the officer has reason to believe was engaged in the past in a regulated activity, not including outreach or educational activities, and may occur on shore or on the water during commercial or recreational fishing, or other regulated activity. (Fry 10/10)

A contact can also be considered as anytime a state officer establishes official communication with another party (whether this is one vehicle, or one vessel with one person or several persons) while performing official duties for marine conservation enforcement--further defined as: Dockside is verbal face to face contact: At sea is (1) on board other vessel; (2) verbal gunnel to gunnel; (3) due to weather conditions vessel to vessel via radio when in sight of vessel; and (4) if patrol is conducted and contact is made via radio between the patrol aircraft and the vessel while the vessel is in sight. For routine official duties, we do not define the agent must secure detailed personal identification information, rather we define the vehicle or vessel identification information must be noted, and the primary person

with whom the agent is engaging is also noted. If the contact situation escalates into a violation, or investigation, then the level of information obtained is more refined and specific, to include particular identification details of all parties involved.

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**Topic:     Boarding**

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Question:   What is a “boarding” under the JEA?

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Guidance:   A “boarding” is the physical entry upon a vessel for the purposes of enforcing the MSA or any other marine conservation law, or regulation adopted pursuant to those laws, enforced by the Secretary of Commerce, or for conducting administrative or investigative interviews with a regulated individual. (Fry 10/10)

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**Topic:     Regulated Activity**

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Question:   What is a “regulated activity?”

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Guidance:   An activity controlled or governed by the MSA, or other marine conservation law, or regulation adopted pursuant to those laws, enforced by the Secretary of Commerce     (Fry 10/10)

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**Topic:     Regulated Individual or Business**

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Question:   What is a “regulated individual or business?”

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Guidance:   An individual or business whose business activities are controlled or governed by the MSA or other marine conservation law, or regulation adopted pursuant to those laws, enforced by the Secretary of Commerce. (Fry 10/10)

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**Topic:     Marine Law Enforcement Responsibilities**

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Question:   What are “marine law enforcement responsibilities”?

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Guidance:   Law enforcement responsibilities of a State, territorial, or commonwealth marine conservation law enforcement agency that involve enforcing laws and regulations related to oceans of the United States, and in certain circumstances, fresh water tributaries in which anadromous species of fish can be found. (Fry 10/10)

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**Topic:     Priorities or Federal Priorities**

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Question:   What are “priorities” or “Federal priorities”?

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Guidance:   Those efforts that focus on illegal activities having the greatest negative impact on federally protected fisheries, sanctuaries, protected and endangered species, and/or protected habitats.

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**Topic:     Overhead**

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Question:   What is “overhead” and what can it be used for?

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Guidance:   Overhead is the portion of a JEA award intended to compensate the state for the costs of providing the infrastructure necessary to supply the law enforcement services to the Federal Government. It is represented in the JEA by a financial calculation based on a percentage of the total funds attributed to an agency’s planned operational expenses needed to complete the terms of the JEA. In the preparation of a JEA, a calculation is prepared in which an agency lists the total

cost, including personnel and vessel or aircraft expenses, for those services based on the number of hours that will be provided. To refund the state for certain administrative expenses related to managing the JEA, OLE allows the state to claim 35% of the total operational expenses as overhead. No overhead is allowed to be calculated based on funds dedicated to purchasing equipment or services. Overhead funds should be used to cover the state's infrastructure and administrative costs associated with normal expenses required to administer the JEA, and may include, but is not limited to, payroll support, clerical support, data entry, office space, vehicle fuel and maintenance, and so forth. (Paterni 2/05, Fry 10/10)

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**Topic: Allowable Costs**

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**Question:** What are "allowable costs" under the JEA?

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**Guidance:** A state receiving JEA funds may be reimbursed the reasonable and necessary costs of providing a trained and equipped law enforcement officer's services or those of a properly trained administrative or clerical employee under the requirements of a JEA. This includes an hourly or overtime salary and benefits calculated at the "journeyman" or experienced rate, based upon the agency's published personnel and salary policies. A state receiving JEA funds must provide proper documentation to support the rates set forth in the JEA as part of the JEA application process.

In addition, the state may be reimbursed for the reasonable and necessary costs associated with the operation of vessels and aircraft, including fuel and oil. Expenses to provide specially trained personnel to operate vessels and aircraft may be also be reimbursed under the JEA. Specific documentation that sets forth the hourly burn rate for fuel and oil for each class of vessel or aircraft must be included in the JEA application.

The state may also obtain equipment or services that are directly related to meeting the requirements of the JEA or those which enhance the ability of the state to complete its general marine conservation law enforcement responsibilities. Any equipment purchased pursuant to a JEA must rationally be related to marine conservation law enforcement and be used in that mission for a reasonable length of time. The state may purchase equipment such as vehicles, vessels, computers, safety equipment, and so forth. In addition, the state may purchase a service, such as internet or cellular telephone. And with proper justification, the state may purchase personal services such as hiring or paying the salary of an employee whose job is primarily to support the state's marine conservation law enforcement mission, or to provide training or other service that requires a person to deliver. (Fry 101/10)

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**Topic: What does it mean if funds are obligated?**

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**Question:** What does the term "obligated" mean in connection with direct purchases?

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**Guidance:** The JEA requires that direct purchase funds be "obligated" prior to the expiration of the JEA, otherwise the funds must be returned to OLE. To be "obligated" for purposes of the JEA, there must be a formal, binding legal agreement or acknowledgment of a liability to pay a certain sum to a particular person or set of persons executed prior to the expiration or termination of the JEA. (Fry 10/10)

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**Topic: Definition of Case Referral**

**Question:** States JEA partners are required to report the number of “cases” referred to OLE for further investigation. What is the definition of “case referral” in this context?

**Guidance:** A formal, documented report of a suspected civil or criminal violation of a marine conservation law or regulation, initiated by a State conservation law enforcement officer, that has been forwarded to OLE for further investigation or other official action. The referral will include expectations by the State agency regarding investigative and judicial outcomes to be considered by OLE. The State agency is required to identify any potential state charges that may be pursued or pending. The case passes out of the control of the State agency and the ultimate disposition of the outcome rests with OLE. (Fry 11/10)

**Topic: Definition of Arrest**

**Question:** States JEA partners are required to report the number of “arrests” made by State officers. What is the definition of “arrest” in this context?

**Guidance:** *A seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge.* (Black’s Law Dictionary, 7<sup>th</sup> ed.)

Temporarily detaining a suspected violator in order to issue a citation is not an arrest. An arrest requires taking physical custody of the individual. (Fry, 11/10)

**Topic: Amended DEP Date**

**Question:** Is it necessary to include a date on an Amended DEP?

**Guidance:** In order to enhance accountability and audit clarity, an amended date is now required to appear on the first page of a DEP that is attached to a JEA amendment. The date to be placed on the DEP should be the date that the partner and/or CEP Coordinator prepared the document for submission. (Fry 9/11)

**OTHER USEFUL DEFINITIONS**

Term:	Definition:
Report	Formal documentation of an incident, event, or activity.
Warning	Verbal or written indication of a violation.
Citation	A written order issued by a law enforcement officer to appear before a judge on a given date to defend against a stated charge.
Seizure	The act of law enforcement officials taking physical custody or a person, property, including cash, real estate, vehicles, etc., that is or has been used in connection with or acquired by illegal activities.

Patrol	The activity of observation—vehicle, air, vessel, foot, or surveillance.
Dockside Boat Inspection	On board official observation and cursory search of the contents of a vessel, including catch, gear, licensing, registration, and manifest.
Ground Transport inspection	Freight forwarder—UPS, DHL, Wholesaler, Transporter official observation and cursory search of the contents, including shipping or transport documentation.
Airfield inspection	Aircraft and Terminal official observation and cursory search of the air platform and direct supporting facilities intended to receive or hold items of interest, including shipping, manifest, or transportation documentation.
Shore line inspection	Official observation or cursory search of Dock or Shipping Facilities, intended to support marine operations specific to intended items of interest, including shipping, manifest, or transportation documentation.
Retailer	Wholesaler end customer—restaurant, market, or grocery.
Market	An entity that buys fish product from any licensed source and sells it directly to the retail consumer
Inspection	Official observation or cursory search; permitted by federal regulations.
Community Outreach	Introduction or lesson on Marine Conservation and Enforcement.
River Patrol	Law Enforcement Vessel, Vehicle, or Foot Operations in marine affiliated river water systems.
Dockside Patrol (Land Patrol)	Physical patrol by vessel, vehicle, or foot.
At Sea Patrol (Water Patrol)	Physical patrol by vessel; marine waterways.
Air Patrol	The use of an aircraft to facilitate coastal & river enforcement of marine conservation protected species.
Propeller Hours	Vessel engine run time.
Personnel Hours	Any hours worked by a person in support of marine conservation and enforcement.
Patrol Log	Official documentation of start, stop, and significant events during a specified period.
Vessel Hours	The time period between a vessel first moving from its dock for the

	purpose of departing until it returns from patrol and comes to rest in the designated port and the engine is stopped.
Direct Operations	Marine enforcement activities.
Major Program (ALWTRP, Sanctuary)	Separate specialized program initiative.
Administrative/Clerical	Support services provided to marine conservation and enforcement.
Shoreline Patrol	<p>Patrol activity comprised of:</p> <p>Pier, dock. A structure built over the water and supported by pillars.</p> <p>Jetty: A kind of wall, usually made of rocks, built out into the water or parallel to the shore to restrain currents or protect a harbor.</p> <p>Breakwater. An off-shore structure used to protect a harbor or breach from the forces of waves.</p> <p>Breachway. A connecting channel.</p> <p>Bridge. A structure carrying a pathway or roadway over a body of water.</p> <p>Causeway. An elevated or raised way across wet ground or water.</p> <p>Beach. A level stretch of pebbles or sand beside a body of water, often washed by high water.</p> <p>Bank. A stretch of rising land at the edge of a body of water not washed by high water, which could be rocks or an overhanging cliff.</p>
Summary Settlement	Civil penalty schedule approved by NOAA General Counsel for Enforcement and Litigation (GCEL).
License (DL, business permit)	Officially recognized permit to engage in a recognized activity.
Charter/Head Boat	<p>Head boat: A boat on which fishing space and privileges are provided for a fee. The vessel is operated by a licensed captain and crew. In some parts of the country head boats are called head boats or open boats.</p> <p>Charter boat: A boat operating under charter for a price, time, etc. It is operated by a licensed captain and crew and the participants are part of a pre-formed group of anglers. Thus, charters are usually</p>



	closed parties, as opposed to the open status of head boats.
Commercial	Fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade; Fish are taken with gear not authorized by personal use gear rules, or quantities of fish taken in excess of sport limits.
EEZ	Exclusive Economic Zone. The zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.
Fishery	(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks.
Fishing vessel	Any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—  (A) fishing; or  (B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.
HMS	Highly Migratory Species. Tuna species, marlin ( <i>Tetrapturus</i> spp. And <i>Makaira</i> spp.), oceanic sharks, sailfishes ( <i>Istiophorus</i> spp.), and swordfish ( <i>Xiphias gladius</i> ).
IFQ	Individual Fishing Quota. A Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.
Person	Any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.
Recreational Fishing	Fishing primarily with hook and line for pleasure, amusement, relaxation, or personal consumption.
State	Each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

TED	Turtle Extruder Device
Groundfish	A bottom fish; especially a marine fish (as a cod, haddock, pollack, or flounder) of commercial importance.
FMP	Fishery Management Plan. A plan developed by a Regional Fishery Management Council and the Secretary of the Department of Commerce to manage a fishery resource pursuant to the Magnuson Fishery Conservation and Management Act of 1976.
Authority	The legal ability to conduct official law enforcement activities.
Federal	United States Government
Federal Written as State	Federal violation written as a state violation.
State Only	Law, regulation or rule that pertains exclusively to state enforcement and conservation.
Tournament	Competitive recognized sanctioned fishing event.
ALWTRP	Atlantic Large Whale Take Reduction Plan.
Native American	Those persons that are members of either a treaty Indian Tribe or established by executive order.
Engagement	To initiate communications with a person in the course of their official duty.
Enforcement Action	Official activity by sworn personnel to issue a warning, a citation, summary settlement, or make a forcible arrest.
Latitude/Longitude	Geographic mapping and locating.
Start time	Commencement
End time	Conclusion
Port of Destination	Vessel end stop location.
Number on Board	All crew and passengers on board a particular vessel.
Vessel Identification	Registration number.
Primary Vessel Operator	Person identified as the captain of a vessel.
Officer Safety Hazard	An element, situation, or event that may pose concern to a sworn law enforcement person.

Nationality	Country of citizenship.
Pollution	(A) To make physically impure or unclean.(B) To contaminate (an environment) especially with man-made waste.
Habitat damage	Detrimental impact on an ecosystem including marine species or in more general terms.
Shore based fishing	Person(s) engaged in dock, beach, shoreline, bank fishing.
Number of people contacted directly	Those person(s) engaged with during official duties.
Number of people attending event	General or exact number of persons attending a specific event (i.e. fishing tournament, outreach event, etc...)
PSA	Public Service Announcement
PSA Market size	Approximate number of persons that a Public Service Announcement is expected to reach.
Capacity	The ability to complete work specified in the JEA. For purposes of funding, the number of sworn staff and vessels is relevant.
Sworn Staff	Marine conservation law enforcement officers who ordinarily carry a firearm and a badge, have full arrest powers, and are authorized and paid to enforce criminal and civil laws of the state related to living marine resource management, protection, and conservation. The term “sworn staff” also means those law enforcement officers of the agency who are either dedicated to marine conservation law enforcement on a full time basis and perform JEA duties as part of their normal duties, or those who perform JEA duties on a part time or overtime basis a minimum of 40 hours per quarter.
Patrol Vessel	Law enforcement patrol boats owned and operated by state marine conservation law enforcement agencies dedicated to near shore and off-shore marine patrols.
Near Shore Vessel	A patrol vessel that typically patrols along the coastline out to approximately 3 miles from the coastline.
Mid-Range Vessel	A patrol vessel that is capable of sustained operation beyond three miles but less than 12 miles from the coastline.
Long-Range Vessel	A patrol vessel that is capable of sustained operation beyond 12 miles from the coastline.
Enforcement Effort	Activities undertaken by a state marine conservation law enforcement agency in order to achieve goals and objectives set forth in a JEA. For purposes of funding, “enforcement effort” means locations, area, or items that require, as part of marine conservation law enforcement, monitoring, patrol, inspection, and/or investigation, including ports, airports, border

	control points, tidal shoreline and general coastline, commercial landings of Federally managed fisheries, and commercial fish business (processors, wholesalers, dealers, etc.)
Port	A marina, harbor, inlet or other offloading site in which facilities capable of buying, receiving and selling saltwater fish products are in the immediate vicinity (i.e. on the water or within a short drive) and in which the facilities receiving commercial fish product are required to generate Trip Tickets (fish accounting reports that document fishing activity, product shipment).
Airport	A publicly owned commercial airport that in addition to air transportation services are served by aircraft providing air transportation of cargo, specifically fish and fish product.
Border Control Point	A land-based location between two states or countries where vehicles and/or shipments are inspected.
Tidal shoreline	Shoreline of outer coast, offshore islands, bays, rivers, and creeks.
General shoreline	General outline of seacoast.
Commercial Landings of Federally Managed Fisheries	Means the quantity, in pounds, of fish or shellfish, brought ashore and sold of species managed by Federal law, regulation, or fishery management plan.
Commercial Fish Business	Means processors, wholesalers, and dealers involved in receiving, processing, shipping, or selling fish and fish products.
Processor	A facility located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.
Wholesaler	A person or entity that buys fish from a source other than a vessel, including another licensed wholesaler or dealer and sells to any customer except the consumer.
Dealer	A person or entity who takes possession or ownership of fish or shellfish and sells, barter, or exchanges, or attempts to sell, barter, or exchange fish or shellfish that have been landed in a state, or entered a state in interstate or foreign commerce.
Targeted Marine Activities	Elements of commercial and recreational fishing selected for heightened monitoring, patrol, inspection or investigation under the terms of a JEA, including State commercial fishing permits, Federal commercial fishing permits, Federal recreational fishing permits, state registered commercial fishing vessels, Federally documented commercial fishing vessels, state registered recreational fishing vessels, Federal marine protected areas, and Federal marine sanctuaries/monuments.

State commercial fishing permit	A license issued by a state which permits an individual or a fishing vessel to catch state regulated fish or shellfish.
Federal commercial fishing permit	A license issued to an individual or vessel by the Federal government that permits the catching of certain quantities of certain species of fish or shellfish or provides an exemption from taking certain species of fish or shellfish.
Federal recreational fishing permit	A recreational fishing permit, listed by state, in the NMFS Saltwater Registry.
State registered commercial fishing vessel	A motor driven commercial fishing vessel having a capacity of less than 5 net tons not registered with the US Coast Guard but required to be registered by a state.
Federally documented Commercial fishing vessel	A commercial fishing vessel having a capacity of 5 net tones or more and which are either enrolled or documented by the US Coast Guard and have an official number assigned to that vessel.
State registered recreational fishing vessel	A recreational fishing vessel required by state law to be registered.
Federal Marine Protected Area	An area of the marine or coastal environment that is afforded some degree of legal protection for natural and/or cultural resources and is regulated by the Federal government.
Federal Sanctuary	One of the 13 national marine sanctuaries and/or the Papahānaumokuākea Marine National Monument.
NMFS Priorities	Specific priorities identified by NMFS/OLE for increased monitoring, patrol, inspection or investigation, such as overfished stocks, stocks subject to overfishing, ESA listed species and MMPA listed species, and Federally managed fisheries.
Overfished stocks	A species of fish where the rate or level of fishing mortality jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.
Stocks “subject to overfishing”	A species of fish where the rate or level of fishing mortality has not jeopardized the capacity of a fishery to produce the maximum sustainable yield on a continuing basis but because of the nature of the fishery the stock is one that could, without adequate protection, become “overfished.”
ESA Listings and MMPA	Those endangered species and marine mammals protected by Federal law and over which the NMFS/OLE has jurisdiction.
Federally Managed Fisheries	Any fishery in which commercial fishing is managed by the Federal government.
Equipment	An article of nonexpendable, tangible personal property having a useful life of more than one year.

## OLE CEP CONTACTS

### Office of Law Enforcement Headquarters

National Oceanographic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Law Enforcement  
8484 Georgia Avenue  
Suite 415  
Silver Spring, MD. 20910  
(301) 427-2300  
(301) 427-2055 (Fax)  
<http://www.nmfs.noaa.gov/ole/>

Bruce C. Buckson, Director  
[Bruce.buckson@noaa.gov](mailto:Bruce.buckson@noaa.gov)

Tracy Dunn, Acting Deputy Director  
[Tracy.dunn@noaa.gov](mailto:Tracy.dunn@noaa.gov)

Todd Dubois  
Assistant Director  
[Todd.dubois@noaa.gov](mailto:Todd.dubois@noaa.gov)

Michael A. Fry, Special Agent  
National Cooperative Enforcement Program Manager  
[Michael.fry@noaa.gov](mailto:Michael.fry@noaa.gov)

John Ford, Program Analyst  
[John.ford@noaa.gov](mailto:John.ford@noaa.gov)

### Northeast Division, Main Office

National Oceanographic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Law Enforcement  
Suite 02-300  
55 Great Republic Drive  
Gloucester, MA 01930  
(978) 281-9213  
(978) 281-9317 (Fax)  
[http://www.nmfs.noaa.gov/ole/ne\\_northeast.html](http://www.nmfs.noaa.gov/ole/ne_northeast.html)

Logan Gregory, Special Agent-in-Charge  
[Logan.gregory@noaa.gov](mailto:Logan.gregory@noaa.gov)  
978-281-9206

Tim Donovan, Deputy Special Agent in Charge  
[Timothy.Donovan@noaa.gov](mailto:Timothy.Donovan@noaa.gov)  
(978) 281-9156

Leta Etheridge, Division CEP Coordinator  
[Leta.etheridge@noaa.gov](mailto:Leta.etheridge@noaa.gov)  
(978) 281-9160

**Southeast Division, Main Office**

National Oceanographic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Law Enforcement  
263 13<sup>th</sup> Avenue South, Suite 109  
St. Petersburg, FL 33701  
(727) 824-5344  
(727) 824-5355 (Fax)  
[http://www.nmfs.noaa.gov/ole/se\\_southeast.html](http://www.nmfs.noaa.gov/ole/se_southeast.html)

[VACANT] SAC

Otha Easley, Acting Special Agent in Charge, Division CEP Manager  
[Otha.easley@noaa.gov](mailto:Otha.easley@noaa.gov)

[Vacant] Division CEP Coordinator

**Southwest Division, Main Office**

National Oceanographic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Law Enforcement  
501 W. Ocean Boulevard  
Suite 4300  
Long Beach, CA 90802  
(562) 980-4050  
(562) 980-4058 (Fax)  
[http://www.nmfs.noaa.gov/ole/sw\\_southwest.html](http://www.nmfs.noaa.gov/ole/sw_southwest.html)

Don Masters, Special Agent in Charge  
[Don.masters@noaa.gov](mailto:Don.masters@noaa.gov)  
(562) 980-4050



Martina Sagapolu, Deputy Special Agent in Charge  
[Martina.sagapolu@noaa.gov](mailto:Martina.sagapolu@noaa.gov)  
(562) 980-4054

Marc Cline, Assistant Special Agent in Charge, Division CEP Manager  
[Marc.cline@noaa.gov](mailto:Marc.cline@noaa.gov)  
(831) 647-2126

Lisa Querin, Division CEP Coordinator  
[Lisa.querin@noaa.gov](mailto:Lisa.querin@noaa.gov)  
(707) 575-6070

### **Northwest Division, Main Office**

National Oceanographic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Law Enforcement  
7600 Sand Point Way, NE  
Seattle, WA 98115  
(206) 526-6133  
(206) 526-6528 (Fax)  
[http://www.nmfs.noaa.gov/ole/nw\\_northwest.html](http://www.nmfs.noaa.gov/ole/nw_northwest.html)

Vicki Nomura, Special Agent in Charge  
[Vicki.nomura@noaa.gov](mailto:Vicki.nomura@noaa.gov)  
(206) 526-6133

Bill Giles, Deputy Special Agent in Charge  
[Bill.giles@noaa.gov](mailto:Bill.giles@noaa.gov)  
(206) 526-6137

Andrew Weinstock, Division CEP Coordinator  
[andrew.weinstock@noaa.gov](mailto:andrew.weinstock@noaa.gov)  
(206) 526-4616

### **Alaska Division, Main Office**

National Oceanographic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Law Enforcement  
P.O. Box 21767  
709 W. 9<sup>th</sup> Street, Room M90C  
Juneau, AK 99802-1767  
(907) 586-7225  
(907) 586-7200 (Fax)  
[http://www.nmfs.noaa.gov/ole/ak\\_alaska.html](http://www.nmfs.noaa.gov/ole/ak_alaska.html)

Sherrie Tinsely-Myers, Special Agent in Charge  
[Sherrie.tinsely-myers@noaa.gov](mailto:Sherrie.tinsely-myers@noaa.gov)  
(907) 586-9352

Matthew Brown, Deputy Special Agent in Charge  
[Matthew.brown@noaa.gov](mailto:Matthew.brown@noaa.gov)  
(907) 586-7552

Robyn Holloway, Division CEP Coordinator  
[robyn.holloway@noaa.gov](mailto:robyn.holloway@noaa.gov)  
(907) 586-9351

**Pacific Island Division, Main Office**

National Oceanographic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Law Enforcement  
1601 Kapiolani Street, Suite 950  
Honolulu, HI 96814  
(808) 203-2500  
(808) 203-2599 (Fax)  
[http://www.nmfs.noaa.gov/ole/pi\\_pacificislands.html](http://www.nmfs.noaa.gov/ole/pi_pacificislands.html)

William Pickering, Special Agent in Charge  
[william.pickering@noaa.gov](mailto:william.pickering@noaa.gov)  
(808) 203-2501

Scot Yamashita, Deputy Special Agent in Charge  
[scot.yamashita@noaa.gov](mailto:scot.yamashita@noaa.gov)  
(808) 203-2502

John Barylsky, Assistant Special Agent-in-Charge, Division CEP Manager  
[John.barylsky@noaa.gov](mailto:John.barylsky@noaa.gov)  
(808) 203-2555

Nicholas Mitsunaga, Division CEP Coordinator  
[Nicholas.mitsunaga@noaa.gov](mailto:Nicholas.mitsunaga@noaa.gov)  
(808) 203-2530